TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 314

LOIS BOWDEN AND ZADA SANDERS,
PETITIONERS,

vs.

CITY OF FORT SMITH, ARKANSAS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

PETITION FOR CERTIORARI FILED JULY 28, 1941.

CERTIORARI GRANTED MARCH 16, 1942.

SUPREME COURT OF THE UNITED STATES

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INDEX.

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[fols. 1-2] [Captions omitted]

[fol. 3]

IN MUNICIPAL COURT OF THE CITY OF FORT SMITH, ARKANSAS

CITY OF FORT SMITH

vs.

H. D. COLE

TRANSCRIPT OF APPEAL—Filed June 26, 1940

June 25, 1940, H. D. Cole was arrested by officers brought before municipal court of the city of Fort Smith, Arkansas, charged with the offense of passing out and selling handbills without a license to which charge defendant pleaded not guilty, whereupon he was tried, convicted and fined $20 and the further sum of $— as costs in said case.

June 26, 1940, defendant filed bond for appeal with Arthur Jurney as surety. Bond approved this 26th day of June, 1940.

I, Wyatt W. Wilkerson, Clerk of said Municipal Court, do certify that the above and foregoing is a true and correct transcript of the proceedings, orders and judgment in the above entitled cause, as shown by docket of said Court.

Witness my hand and seal of said municipal court this 26th day of June, 1940.

Wyatt W. Wilkerson, Clerk. (Seal.)

[File endorsement omitted.]

[fol. 4] Bond on appeal of H. D. Cole for $40.00 approved and filed June 26, 1940, omitted in printing.

[fol. 5] IN SEBASTIAN CIRCUIT COURT, FORT SMITH DISTRICT

No. 382 MC

CITY OF FORT SMITH, Plaintiff,

vs.

H. D. COLE, Defendant

MOTION TO DISMISS—Filed October 25, 1940

Comes now the defendant and moves the court to dismiss this action on the following grounds:

1. That the complaint is invalid and does not state facts sufficient to constitute an offense under the law.

2. That the facts as stipulated herein fail to show that the defendant has violated said ordinance.

3. That the ordinance in question is invalid and void by reason that it is in direct conflict with the Constitution of this State and of the United States, in this: That it restricts the freedom of speech, freedom of press, and fre-dom of worship of Almighty God.

4. That the ordinance in question is in direct violation of the Fourteenth Amendment to the Constitution of the United States of America.

5. That the facts as stipulated herein fail to show that defendant is guilty.

Wherefore, defendant moves the court to dismiss this case and that the defendant be discharged.

Woolsey & McKenzie, By Mark E. Woolsey, Attorney for Defendant.

[File endorsement omitted.]

[fol. 6] IN MUNICIPAL COURT OF THE CITY OF FORT SMITH, ARKANSAS

CITY OF FORT SMITH

v.

LOIS BOWDEN

TRANSCRIPT OF APPEAL—Filed September 14, 1940

September 14, 1940, Lois Bowden was arrested by officers Willis-Higgins brought before Municipal Court of the City of Fort Smith, Arkansas, charged with the offense of Vio. City Ordinance No. 1172 to which charge defendant pleaded not guilty, whereupon he was tried, convicted and fined $20 and the further sum of $— as costs in said case.

September 14, 1940, defendant filed Bond for Appeal with Milton Barnes, Zach Dobyns and E. B. Bugg as surety. Bond approved this 14th day of September, 1940.

I, Wyatt W. Wilkerson, Clerk of said Municipal Court, do certify that the above and foregoing is a true and correct transcript of the proceedings, orders and judgment in

the above entitled cause, as shown by docket of said court.

Witness my hand and seal of said municipal court this 14th day of September, 1940.

Wyatt W. Wilkerson, Clerk. (Seal.)

[File endorsement omitted.]

[fol. 7] Bond on appeal of Lois Bowden for $40.00 approved and filed Sept. 14, 1940, omitted in printing.

[fol. 8] In Sebastian Circuit Court, Fort Smith District

City of Fort Smith, Plaintiff,

vs.

Lois Bowden, Defendant

Motion to Dismiss—Filed October 25, 1940

Comes now the defendant and moves the court to dismiss this action on the following grounds:

1. That the complaint is invalid and does not state facts sufficient to constitute an offense under the law.

2. That the facts as stipulated herein fail to show that the defendant has violated said ordinance.

3. That the ordinance in question is invalid and void by reason that it is in direct conflict with the Constitution of this State and of the United States, in this: That it restricts the freedom of speech, freedom of press, and freedom of worship of Almighty God.

4. That the ordinance in question is in direct violation of the Fourteenth Amendment to the Constitution of the United States of America.

5. That the facts as stipulated herein fail to show that defendant is guilty.

Wherefore, defendant moves the court to dismiss this case and that the defendant be discharged.

Woolsey & McKenzie, by Mark E. Woolsey, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 9] IN MUNICIPAL COURT OF THE CITY OF FORT SMITH, ARKANSAS

CITY OF FORT SMITH

v.

ZADA SANDERS

TRANSCRIPT OF APPEAL—Filed September 14, 1940

September 14, 1940, Zada Sanders was arrested by officers Willis-Higgins brought before Municipal Court of the city of Fort Smith, Arkansas, charged with the offense of Vio. City Ordinance No. 1172 to which charge defendant pleaded not guilty, whereupon he was tried, convicted and fined $20 and the further sum of $— as costs in said case.

September 14, 1940, defendant filed Bond for Appeal with Milton Barnes, Zach Dobyns and E. R. Bugg as surety. Bond approved this 14th day of September, 1940.

I, Wyatt W. Wilkerson, Clerk of said Municipal Court, do certify that the above and foregoing is a true and correct transcript of the proceedings, orders and judgment in the above entitled cause, as shown by docket of said court.

Witness my hand and seal of said municipal court this 14th day of September, 1940.

Wyatt W. Wilkerson, Clerk. (Seal.)

[File endorsement omitted.]

[fol. 10] Bond on Appeal of Zada Sanders for $40.00 approved and filed Sept. 14, 1940 omitted in printing.

[fol. 11] IN SEBASTIAN CIRCUIT COURT, FORT SMITH DISTRICT

CITY OF FORT SMITH, Plaintiff,

v.

ZADA SANDERS, Defendant

MOTION TO DISMISS—Filed October 25, 1940

Comes now the defendant and moves the court to dismiss this action on the following grounds:

1. That the complaint is invalid and does not state facts sufficient to constitute an offense under the law.

2. That the facts as stipulated herein fail to show that the defendant has violated said ordinance.

3. That the ordinance in question is invalid and void by reason that it is in direct conflict with the Constitution of this State and of the United States, in this: That it restricts the freedom of speech, freedom of press, and freedom of worship of Almighty God.

4. That the ordinance in question is in direct violation of the Fourteenth Amendment to the Constitution of the United States of America.

5. That the facts as stipulated herein fail to show that defendant is guilty.

Wherefore, defendant moves the court to dismiss this case and that the defendant be discharged.

Woolsey & McKenzie, by Mark E. Woolsey, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 12] ORDINANCE No. 1568

An Ordinance entitled: An Ordinance amending Item 10 of Section 1 of Ordinance No. 1557.

Be It Ordained by the Board of Commissioners of the City of Fort Smith:

Section 1. That item 10 of Section 1 of Ordinance No. 1557 be amended to read as follows:

Item 10. Advertising: Distributors of circulars, handbills, samples, or other advertising matter, $24 per annum, $5 per month, $1 per day; and each person engaging in distributing such advertising matter, whether upon his own account or as an agent, servant, or employee, shall pay said tax and shall keep in his or her possession, while so engaged, a receipt for said tax and exhibit same to the officers of the city upon demand.

Section 2. This ordinance shall be in force and effect upon its passage and publication.

Passed and adopted on this the 19th day of June, 1930.

Fagan Bourland, Mayor.

Attest: Geo. Carnall, City Clerk.

(Published in Southwest American and Times Record 7-21-1930.

I, C. W. Steuart, Clerk of the City of Fort Smith, Arkansas, do hereby certify that the foregoing is a true and correct copy of Ordinance #1568 as taken from the original ordinance on file in my office.

Given under my hand and seal at Fort Smith, Arkansas, on this 19th day of June, 1940.

C. W. Steuart, City Clerk. (Seal.)

Endorsed on back: "Fort Smith District. Filed 1940; Jul. 16 P. M. 12:02. Paul Lynch, Clerk."

[fol. 13] IN SEBASTIAN CIRCUIT COURT, FORT SMITH DISTRICT

No. 382MC

CITY OF FORT SMITH, Plaintiff,

vs.

H. D. COLE, Defendant

Passing Out & Selling Handbills Without License.

No. 408MC

CITY OF FORT SMITH, Plaintiff,

vs.

LOIS BOWDEN, Defendant

Violating Ordinance #1172.

No. 409MC

CITY OF FORT SMITH, Plaintiff,

vs.

ZADA SANDERS, Defendant

Violating Ordinance #1172.

MINUTE ORDER OF HEARING

Now on this 25th day of October, 1940, the same being a day of the regular October, 1940, term of this court, this

cause comes on to be heard, when comes the plaintiff, City of Fort Smith, by its attorney, Lem C. Bryan, when come the defendants, H. D. Cole, Lois Bowden, and Zada Sanders, in person and by their attorney, Mark E. Woolsey, and all parties announce ready for trial. Whereupon, by consent of all parties, these causes are consolidated for trial, same being cases Nos. 382, 408 and 409, and by agreement of all parties, a jury is waived and the matter is submitted to the court upon defendants' demurrers and agreed statement of facts, defendants' separate motions to dismiss, requested findings of fact and declarations of law requested by each of the defendants, and requested findings of fact and declarations of law requested by the plaintiff; and the court, after hearing argument of counsel, takes said causes under advisement.

[fol. 14] In Sebastian Circuit Court, Fort Smith District

[Title omitted]

Motion for New Trial—Filed December 7, 1940

Comes now each of the defendants, H. D. Cole, Lois Bowden, and Zada Sanders, and moves the court to set aside its findings of fact and declarations of law and the judgment of the court thereon and to grant each of them a new trial herein, and for grounds state:

1. The decision of the court is contrary to the evidence.

2. The decision of the court is contrary to the law.

3. The court erred in failing to make requested findings of fact numbers 3, 4, 6, and 8 requested by the defendants and erred in failing to make each of the above requested findings of fact.

4. That the court erred in failing to make declarations of law numbers 1, 2 and 3 requested by the defendant, H. D. Cole, and erred in failing to make each of said declarations of law.

5. The court erred in failing to make requested declarations of law numbers 1, 2, and 3, as requested by the defendants, Zada Sanders and Lois Bowden and erred in failing to make each of said declarations of law.

6. The court erred in making findings of fact numbers 1, 2, 3, 4, 5 requested by the plaintiff, city of Fort Smith, and erred in making each of said findings of fact.

[fol. 15] 7. The court erred in making declarations of law numbers 1 and 2 requested by the plaintiff, city of Fort Smith, and erred in making each of said declarations of law.

Wherefore, said defendants, and each of them, move the court to grant them, and each of them, a new trial herein.

Mark E. Woolsey, Attorney for Defendants.

[File endorsement omitted.]

[fol. 16] In Sebastian Circuit Court, Fort Smith District

[Title omitted]

Order Overruling Defendants' Motion for New Trial—December 7, 1940

Now on this 7th day of December, 1940, come the defendants, H. D. Cole, Lois Bowden, and Zada Sanders, and file motion for new trial, and the court, after hearing argument of counsel and being well and sufficiently advised in the premises, doth overrule defendants' motion for new trial, to which action of the court the defendants, and each of them, duly except and pray an appeal to the Supreme Court of Arkansas, which is granted, and defendants are allowed 58 days from the date of the judgment in which to prepare and file their bill of exceptions. Defendants' appeal bonds are fixed at $25 in each case.

[fol. 17] In Circuit Court of Sebastian County, Fort Smith District

Judgment—November 25, 1940

Now on this 25th day of November, 1940, the same being a day of the regular October, 1940, term of this court, the court, after having these causes under advisement and being well and sufficiently advised in the premises, doth overrule defendants' separate demurrer and separate motions

to dismiss, and doth refuse to give requested findings of fact No. 3, 4, 6, and 8 requested by the defendants but gave such requested findings except No. 8 as modified. The court also refuses to make declarations of law No. 1, 2, and 3 requested by the defendant, H. D. Cole. The court also refuses to make requested declarations of law Nos. 1, 2, and 3 requested by the defendants, Zada Sanders and Lois Bowden. To the action of the court in refusing to make such findings of fact and direct declarations of law, the defendants and each of them duly objected and saved their exceptions, and the court doth make findings of fact Nos. 1, 2, 3, 4, and 5 as requested by the plaintiff, and makes declarations of law Nos. 1 and 2 as requested by the plaintiff.

The court therefore finds that the defendant, H. D. Cole, is guilty of passing out and selling handbills without a license, in violation of ordinance No. 1568 of the city of Fort Smith, and that each of the defendants, Lois Bowden and Zada Sanders, is guilty of violating ordinance No. 1172 of the city of Fort Smith; and for said violations, the court doth assess a fine of $5 against each of said defendants.

It is, therefore, considered, ordered, and adjudged that the city of Fort Smith do have and recover of and from each of the defendants, H. D. Cole, Lois Bowden, and Zada Sanders, the sum of $5 each, together with all the costs of the prosecution; and should said defendants make default in the payment of said fine and costs, they are to be confined in the county jail for a period until said fine and costs are [fol. 18] liquidated in the manner provided by law. To each finding of the court, the defendants separately and severally excepted.

[fol. 19] In Sebastian Circuit Court, Fort Smith District

No. 382MC

City of Fort Smith, Plaintiff,

vs.

H. D. Cole, Defendant

Passing Out & Selling Handbills Without a License.

No. 408MC

CITY OF FORT SMITH, Plaintiff,

vs.

LOIS BOWDEN, Defendant

Violating Ordinance # 1172.

No. 409MC

CITY OF FORT SMITH, Plaintiff,

vs.

ZADA SANDERS, Defendant

Violating Ordinance # 1172.

Bill of Exceptions—Filed January 5, 1941

[fol. 20] IN SEBASTIAN CIRCUIT COURT, FORT SMITH DISTRICT

STIPULATION OF FACTS—Filed October 25, 1940

These are three separate cases arising here on appeal from the municipal court of the city of Fort Smith, Arkansas, and by agreement have been consolidated for trial by the court without a jury and upon the following agreed statement of facts.

The defendant H. D. Cole was convicted in the municipal court of Fort Smith, Arkansas, on the 25th day of June, 1940, for passing out and selling handbills without a license in violation of Ordinance No. —, attached hereto, marked Exhibit "A", and made a part hereof.

The defendant Lois Bowden and the defendant Zada Sanders were convicted in the municipal court of the city of Fort Smith, Arkansas, on the 14th day of September, 1940, for the violation of ordinance No. 1172, which ordinance is attached hereto, marked Exhibit "B", and made a part hereof.

From the judgment of conviction in the municipal court as aforesaid each of said defendants has duly prosecuted and perfected an appeal to this court.

Each of the defendants is a member of a company of men and women known as Jehovah's Witnesses. *H*ehovah Witnesses are not a religious sect or denomination but are a company of Christian men and women who have individually taken their stand on the side of the Lord and who jointly go forward in obedience to *h*is commandment to publish the Theocratic Government and to make known to the sincere people of earth God's gracious provision for man's salvation.

[fol. 21] Each of the defendants claims to be an ordained minister of the gospel and claims that the authority of ordination or commission of Jehovah's Witnesses is given to them exclusively by Jehovah God and through Christ Jesus the King of Theocracy. Their ordination or commission of authority was first conferred upon Christ Jesus, and through him extends to all *h*is true followers and to which the following commission applies, to-wit:

"The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn.—Isa. 61:1, 2."

They do not engage in this work for any selfish reason but because they feel called to publish the news and preach the gospel of the kingdom to all the world as a witness before the end comes. Matt. 24:14. They believe that in doing this they are engaged in work that the Almighty God declared must be done. To them the words "to preach" means to proclaim or publish. They claim to be publishers of the message of Jehovah making known his name and his government. Such publication is done by word of mouth, by distribution of the printed message, by the reproduction of recorded speech, by means of electrical transcription and phonographs and by the radio. They believe that the only effective way to preach is to go from house to house and make personal contact with the people and distribute to them books and pamphlets setting forth their views of Christianity.

In order to carry on this work they have organized three corporations, namely, The Peoples' Pulpit Association, The

Watch Tower Bible and Tract Society, Inc., and The International Bible Students Association, which corporations publish the books and pamphlets setting forth the views of Jehovah's Witnesses. They make no profit from this work but do same at a loss.

[fol. 22] Their beliefs are more particularly set out in their articles of faith hereto attached as Exhibit "C" and made a part hereof.

On or about the 15th day of June, 1940, the defendant H. D. Cole within the city of Fort Smith, Arkansas, and upon the main street of the city was contacting pedestrians thereon offering them a paper magazine "Consolation" setting forth their views of Christianity as held by the Jehovah's Witnesses upon the contribution of five cents ($.05). Enclosed in the magazine was a printed handbill giving information concerning a convention and extending an invitation to all interested to attend. This was a convention to be held in Columbus and other large cities simultaneously. The police officers of the city asked the price of the magazine. The defendant Cole stated that anyone who would contribute a nickel could have a copy. The defendant had no privilege license issued by the city of Fort Smith for passing out or selling handbills. He was thereupon arrested and convicted in the municipal court from whe*n* he prosecutes this appeal.

On or about the 12th day of September, 1940, the defendant Mrs. Lois Bowden and the defendant Miss Zada Sanders were going from house to house in the residential section within the city of Fort Smith playing phonograph records upon which bible lectures had been recorded at each house after having first secured permission. Also they *were* presented to the residents of these houses various booklets, leaflets and periodicals setting forth their views of Christianity held by Jehovah's Witnesses. These booklets, leaflets and periodicals were supplied to the defendants by the Watch Tower Bible and Tract Society at a stipulated price which these individual defendants paid before the books were delivered from the Watch Tower Bible and Tract Society of Brooklyn, New York. These defendants undertook to distribute these books to the residents of the city soliciting at the same time a contribution of twenty-five [fol. 23] cents (0.25) for each book. Within the covers of these books setting forth the views of Christianity as held by Jehovah's Witnesses is an advertisement or announce-

ment setting forth the rates for which the books may be purchased in numbers from the Watch Tower Bible and Tract Society of Brooklyn, New York. These books in some instances are distributed free when the people wishing them are unable to contribute. Neither of these defendants had any license of any nature from the city of Fort Smith to distribute handbills or to sell or distribute books.

Lem C. Bryan, for the city of Fort Smith, Ark.
Woolsey & McKenzie, by Mark E. Woolsey, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 24] EXHIBIT "A" TO STIPULATION OF FACTS

Ordinance No. 1568

An Ordinance entitled: An Ordinance amending Section 1 of Ordinance No. 1557.

Be it Ordained by the Board of Commissioners of the City of Fort Smith:

Section 1. That Item 10 of Section 1 of Ordinance No. 1557 be amended to read as follows:

Item 10. Advertising: Distributors of circulars, handbills, samples or other advertising matter, $25 per annum, $5 per month, $1 per day; and each person engaging in distributing such advertising matter, whether upon his own account or as an agent, servant, or employee, shall pay said tax and shall keep in his or her possession, while so engaged, a receipt for said tax and exhibit same to the officers of the city upon demand.

Section 2. This ordinance shall be in force and effect upon its passage and publication.

Passed and adopted this 19th day of July, 1930.

Fagan Bourland, Mayor.

Attest: Geo. Carnall, City Clerk.

Published in Southwest-American & Times Record 7-21-1930.

Penalty as provided in Section 8 of Ordinance No. 1315, which Ordinance No. 1557 amends:

Section 8. Any person, firm or corporation or agent thereof, violating any provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction in the police court of the city, shall be fined in any sum not less than the amount of the license provided for in the section violated, nor more than double such amount for each offense, and each day of said violation shall constitute a separate offense.

[fol. 25] EXHIBIT "B" TO STIPULATION OF FACTS

Extract from Ordinance No. 1172 passed and approved by the Board of Commissioners of the city of Fort Smith on June 28, 1917, and signed by J. H. Wright, Mayor and W. F. Blocker, City Clerk.

Published in Times Record June 29, 1917.

Ordinance No. 1172

An Ordinance Entitled an Ordinance Amending Ordinance No. 1080, Fixing and Prescribing and Establishing the Rates of Certain License in the City of Fort Smith, Arkansas, and Repealing All Ordinances in Conflict Herewith.

Be it Ordained by the Board of Commissioners of the City of Fort Smith, Arkansas:

Section 1. That the license hereinafter named shall be fixed and imposed and collected at the following rates and sums and it shall be unlawful for any person or persons to exercise or pursue any of the following vocations of business in the city of Fort Smith, Arkansas, without first having obtained a license therefor from the city clerk and having paid for the same in gold, silver or United States currency as hereinafter provided.

Section 40. For each person peddling dry goods, notions, wearing apparel, household goods or other articles not herein or otherwise specifically mentioned $25 per month, $10 per week, $2.50 per day. A person, firm or corporation using two or more men in their peddling business $50 per annum.

Section 3. The exercise of the privileges and business professions mentioned in this ordinance without having first obtained and paid the amount of license required and pro-

vided for by this ordinance shall be unlawful and if any person exercising any of the same without license shall be deemed guilty of a misdemeanor and on conviction in the police court shall be fined in any sum not less than $5 nor more than $25 and that each day such business is carried on [fol. 26] in violation of this ordinance shall constitute a separate offense and the prosecution in pursuance thereof shall in no wise affect the right of the city to proceed against such person or persons violating this ordinance in a civil action.

[fol. 27] EXHIBIT "C" TO STIPULATION OF FACTS

Articles of Faith

We the defendants believe that Jehovah is the Almighty God as stated in Exodus 6 verse 3, "And I appeared unto Abraham, unto Isaac, and unto Jacob, by the name of God Almighty, but by my name Jehovah was I not known to them," that he is the creator of heaven and earth as stated in Genesis 1:1 "In the beginning God created the heaven and the earth." In Isaiah 45:12 it is written "I have made the earth, and created man upon it: I, even my hands, have stretched out the heavens, and all their host have I commanded.

That his name Jehovah means, his purpose toward the people, which clearly implies that he has a definite purpose concerning man on this fact is positively borne out by Isaiah 14:26 which reads, "This is the purpose that is purposed upon the whole earth: and this is the hand that is stretched out upon all the nations." Again at Isaiah 46:10, 11, "my counsel shall stand, and I will do all my pleasure, I have spoken it, I will also bring it to pass; I have purposed it, I will also do it."

Jehovah created many spirit creatures of various ranks and order before he created man on this earth and the first of such spirit creatures was the Logas or word who, more than nineteen hundred years ago was sent to earth by his father to be his witness, and have since been identified by his title or name Jesus. John 18:37 supports this claim and reads, "Pilate therefore said unto him, Art thou a king? Jesus answered, Thou sayest that I am a king. To this end was I born, and for this cause came I into the

world, that I should bear witness unto the truth. Everyone that is of the truth heareth my voice."

Long before Jesus was born Jehovah had chosen him to be the kind of his righteous government which all the prophets foretold he should establish on this earth. Isaiah 9:6, 7. "For unto us a child is born, unto us a son is given; and the government shall be upon his shoulder: and his [fol. 28] name shall be called Wonderful, Counsellor, The mighty God, The everlasting Father, The Prince of Peace. Of the increase of his government and peace there shall be no end, upon the throne of David, and upon his kingdom to order it, and to establish it with judgment and with justice from henceforth even for ever. The zeal of the Lord of hosts will perform this."

Before God's government or Kingdom can be established the nations must be judged and the wicked destroyed off the earth, therefore, says the apostle Paul "Because he hath appointed a day, in which he will judge the world in righteousness by that man whom he hath ordained; whereof he hath given assurance unto all men, in that he hath raised him from the dead." Then will be fulfilled the prophecy of Psalms 37: verses 9, 10 & 11, which reads "For evildoers shall be cut off: but those that wait upon the Lord, they shall inherit the earth. For yet a little while, and the wicked shall not be: yea, thou shalt diligently consider his place, and it shall not be. But the meek shall inherit the earth; and delight themselves in the abundance of peace."

For three and one half years Jesus did faithfully witness concerning Jehovah's purpose and his own relation as king to the Kingdom.

When Jesus began his ministry he quoted as his authority the words of Isaiah the prophet towit: "The spirit of the Lord God is upon me; because the Lord has anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; To proclaim the acceptable year of the Lord and the day of vengeance of our God; to comfort all that mourn; To appoint unto them that mourn in Zion, to give unto them beauty for ashes, the oil of joy for mourning, the garment of praise for the spirit of heaviness; that they be called trees of righteousness, the planting of the Lord, that he might be glorified." Isaiah 61: 1, 2, 3. Thereafter Jesus [fol. 29] began to call others to witness about the Kingdom

sending them forth amont the people with the command: "Go ye into all the world, and preach the gospel to every creature." This same command to witness or preach concerning the Kingdom is given to the followers at the end of the world as stated in Matthew 24: 14 quote, "And this gospel of the Kingdom shall be preached in all the world for a witness unto all the nations; and then shall the end come." Also, Mark 3:10 "And the gospel must first be published among all nations." This required duty is just as binding upon his consecrated followers today as it was then, concerning which the apostle Paul says: "For though I preach the gospel, I have nothing to glory of: for necessity is laid upon me; yea, woe is unto me, if I preach not the gospel." Jesus instructed all his followers to pray for that Kingdom and by so doing they thus expressed their faith in God's promise to set up the Kingdom and would also by this means show that they desired to see his will done in the earth even as his will is obeyed in heaven. Matthew 6:10.

The establishment of the Kingdom is the most important of all the events that have ever transpired in the history of man, because it is at that time the judgment of the nations takes place, Matthew 25:32 "And before him shall be gathered all nations; and he shall separate them one from another, as a shepherd divideth his sheep from the goats." The result of this judgment to the nations is found in Psalms 2:9 which reads, "Thou shalt break them with a rod of iron; thou shalt dash them in pieces like a potter's vessel."

Jesus and his apostles and all the prophets foretold that Satan's wicked rule would come to an end with a time of trouble more severe than man had ever known and Jesus himself testified that this period of "sorrows" would be introduced by war among the nations accompanied by famine, pestilences, earthquakes and that the heavenly father would stop that war for a time in order that his consecrated followers, elected or chosen to serve him, could [fol. 30] witness to the fact that the time had come to establish his eternal Kingdom by calling attention to the fulfillment of these prophecies.

These events when considered in the light of prophecy which foretold them constitute signs or proofs and concerning which Jesus says, "and when these things begin to

come to pass, then look up, and lift up your heads; for your redemption draweth nigh." Luke 21:28.

These events did begin to come to pass in the year 1914. In order to prepare a people to do this witness work at the appointed time it pleased the Lord to reveal certain bible truths before 1914 and such truth gathered together a company of people who formed an organization for the purpose of "dessemination" of bible truths by means of publications, in printed form, and other lawful means." Such organization is known as The Watch Tower Bible and Tract Society. And by the use of the printed message prepared by this society, said company of people brought these truths to the attention of millions of other people with the result that many people stood in expectation of the coming of the Lord, believing that the year 1914 would mark the turning point in the affairs of the nations with nations rising against nations and be followed by other events that would bring upon the nations great distress and woe and lead them eventually to the great tribulation or battle or Armageddon.

This matter of preparing his people before the beginning of all these things is described in the book of Malachi in these words, quote: "Behold, I will send my messenger, and he shall prepare the way before me; and the Lord, whom ye seek, shall suddenly come to his temple, even the messenger of the covenant, whom ye delight in: behold, he shall come, saith the Lord of hosts. But who may abide the day of his coming? and who shall stand when he appeareth? for he is like a refiner and purifier of silver: and he shall purify the sons of Levi, and purge them as gold and silver, that they may offer unto the Lord an offering in righteousness."

Be it noted that the first thing that Christ Jesus the mes-[fol. 31]senger of the covenant does after coming to his temple is to refine the silver or sons and this process cleanses or purges God's people who are thereafter required to render a service unto the Lord, as the apostle Paul declares in Hebrews 13:15. "By him therefore let us offer the sacrifice of praise to God continually, that is, the fruit of our lips giving thanks to his name." These and many other scriptures clearly point out that after these events began to take place which mark the end of the world the Lord's people must obey the command given by Jesus and relating to this time which reads, "And this gospel of the

Kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come." Jesus is the messenger or mediator of the covenant and his followers are taken into that covenant with him for the kingdom, and therefore these words of Isaiah 61: 1, 2 apply to all of his followers, quote "The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; To proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn."

In their — of proclaiming the gospel Jesus and his apostles went from city to city, from village to village and went from house to house to tell the people about the promised kingdom and the blessing it would bring. In proof of this mark the following scriptures. Matthew 10:12 to 14. "Nor scrip for your journey, neither two coats, neither shoes, nor yet staves: for the workman is worthy of his meat. And into whatsoever city or town ye shall enter, enquire who in it is worthy; and there abide till ye go thence. And when ye come into an house salute it. And if the house is worthy, let your peace come upon it: but if it be not worthy, let your peace return to you. And whosoever shall not receive you, nor hear your words, when ye depart out of that house or city, shake off the dust of your feet." [fol. 32] After the death of Jesus his followers continued to go from house to house and preach as declared in Acts 20:20 "And how I kept back nothing that was profitable unto you, but have shewed you, and have taught you publickly from house to house."

Paul tells us in 2 Cor. 4:4 that satan is the God of this world. For six thousand years satan has been permitted by the Almighty God to rule over the kingdoms of this earth and the end of this world marks the end of his wicked rule and marks the beginning of the new world of righteousness under Christ.

Every one of the prophets who foretold of the coming kingdom were opposed by the devil working through men under his control. When Jesus began his ministry satan employed his religious agents to turn the people against him and against all his followers. They formed a conspiracy to kill him and drew the political rulers into it and succeeded in having him arrested and crucified. Jesus very

pointedly stated that his followers would be persecuted in the same manner for preaching the gospel in the last days. The apostles were repeatedly arrested for preaching the kingdom and when brought before the courts they stated in no uncertain terms that it was their duty to obey God regardless of the opinion of the Court. Acts 4:19. "But Peter and John answered and said unto them, Whether it be right in the sight of God to hearken unto you more than unto God, judge ye." Acts 5:25. "Then came one and told them, saying Behold the men whom ye put in prison are standing in the temple, and teaching the people." Acts 5:42, "and daily in the temple, and in every house, they ceased not to teach and preach Jesus Christ."

In the face of all the opposition of the wicked, Jesus himself went forth to tell the people about the way to life. His apostles did likewise and all other followers are required to do the same. 1 Peter 2:21 "For even hereunto were ye called: because Christ also suffered for us, leaving us an example, that ye should follow his steps." This work is done to inform the people of God's purpose; [fol. 33] and now because the time is very short before the battle of the great day of God Almighty, Jehova's Witnesses are putting forth every effort to warn the people they may learn the way of escape from destruction.

We the defendants work in harmony with the rest of Jehovah's Witnesses under the directions of The Watch Tower Society, which Society was organized for the very purpose of aiding the people to understand the bible. The policy of the Society and the method of conducting the work has been published in a number of year books since 1925 and to which we refer the Court for information. From one such published in 1939 on page 41 we quote the following: "Jehovah's Witnesses are made up of a large number of persons who are consecrated to Jehovah God and who have associated themselves together in the common cause and work which God has commanded all such consecrated persons to engage in, that is the work of proclaiming his message of truth as contained in the bible for the benefit of the people. Said witnesses therefore constitute a voluntary association. To carry on their work and hold and perpetuate title to their property a corporation or corporations are necessary. In the state of New York the Peoples Pulpit Association, created and organized under the membership corporation law, holds title to all property of Jehovah's

witnesses that is held within that state, and therefore is the corporation of Jehovah's witnesses. The Peoples Pulpit Association is a non-stock and non-profit corporation. It pays no dividends and no salaries and all service rendered by those associated with it is rendered without pecuniary profit save only the necessities of life, such as food and raiment and incidental expenses. The money which was used to purchase its property, and that which is used to support the work it carries on, was and is derived from contributions made by persons interested in the kingdom of God under Christ. All of its money so received is payed out for the purpose of carrying on its work of doing good by publish- [fol. 34] ing literature and distributing it amongst the people, by which the gospel is preached, as set forth in the bible, God's word of truth. Jehovah's Witnesses and the corporation afore-mentioned have no desire to make money, and they receive no pecuniary profit whatsoever. No one associated with the corporation or the work of Jehovah's witnesses receives pecuniary profit. The title to property of Jehovah's witnesses outside of the state of New York is held either by the Watch Tower Bible and Tract Society, a corporation organized under the laws of Pennsylvania, or by the International Bible Students Association, incorporated under the laws of Great Britain. Neither of such corporations has any capital stock, and no one connected therewith receives any pecuniary profit. These corporations, therefore, were created and organized and are used exclusively to carry on the charitable, benevolent and biblical instruction work in which Jehovah's witnesses are engaged and to which they have devoted their lives, to the honor of Jehovah God and to the good of mankind."

We are not selling books or magazines for profit. The small amount of money contributed by the public for the literature covers only a portion of the actual cost of this work, the deficit is made up by voluntary contributions from those who share in this work. Our sole object is to obey the command of the Lord and our failure to do so would result in our eternal destruction. When knowledge and understanding of God's word given to any one it is their duty to publish it for the information of others. Matthew 5:14 to 16. "Ye are the light of the world. A city that is set on a hill cannot be hid. Neither do man light a candle, and put it under a bushel, but on a candlestick; and it giveth light unto all that are in the house. Let your light so

shine before men, that they may see your good works, and glorify your Father which is in heaven." These scriptures make it certain that failure or refusal to proclaim the truth for the benefit of others would place us in the class represented as an unprofitable servant.

[fol. 35] When God commands his people to do a certain thing they must do it or be destroyed and to ask for permission in the form of license or permits issued by men to do the work God has assigned to us to do would be an insult to the Almighty God because it would be a denial of his power or supremacy and admitting that man is superior to the creator. Failure of the rulers to recognize the supremacy of God in times past led them to dispute the right of Jesus and his apostles to preach the gospel and they repeatedly arrested and punished them because these men faithfully served God. By his prophet Jeremiah Jehovah foretold that in the last days the nations would dispute his supremacy, saying, "A noise shall come even to the ends of the earth; for the Lord hath a controversy with the nations, he will plead with all flesh; he will give them that are wicked to the sword, saith the Lord. Thus saith the Lord of hosts, behold, evil shall go forth from nation to nation, and a great whirlwind shall be raised up from the coast of the earth. And the slain of the Lord shall be at that day from one of the earth even unto the other of the earth: they shall not be lamented, neither gathered, nor buried; they shall be dung upon the ground."

Any attempt to stop or hinder the Lord's servants from doing the work he has commanded them to do is equivalent to fighting against God as pointed out by Gamaliel, a doctor of the law, and whose words are recorded in the fifth chapter of Acts verses 34 to 39 which reads. "Then stood there up one in the council, a Pharisee named Gamaliel, a doctor of the law, and in reputation among all the people, and commanded to put the apostles forth a little space; And said unto them, Ye men of Israel, take heed to yourselves what ye intend to do as toughing these men. For before these days rose up Theudas, boasting himself to be somebody; to whom a number of men, about four hundred, joined themselves: who was slain; and all, as many as obeyed him, were scattered, and brought to naught. After this man rose up Judas of Galilee in the days of the taxing, and [fol. 36] drew away much people after him: he also perished; and all, even as many as obeyed him, were dispersed. And

now I say unto you, refrain from these men, and let them alone: for this council or this work be of men, it will come to naught: But if it be of God, ye cannot overthrow it; lest haply ye be found even to fight against God." The parable of the sheep and goats spoken by Jesus and which relates to the period of time called judgment day definitely establishes the fact that persecution of and opposition to his witnesses the Lord regards as against himself and meets out the punishment of everlasting destruction. Matthew 25:45 "Then shall he answer them, saying, verily I say unto you, in as much as ye did it not to one of the least of these, ye did it not to me."

The men who framed the Constitution of these United States took note of all these facts when they included in that document a clause prohibiting congress or any other legislative body in the land from making any law or ordinance that would in any manner condition, regulate, restrict, restrain, interfere with or stop the free exercise of religion and the worship of Almight- God. The law of the states also quarantee this same privilege to worship according to the dictates of one's conscience. The supreme court of the United States has repeatedly upheld our right to do this work; the last case before this court was in May of this year and this was decided in our favor. Jesus and his disciples worshiped God "in spirit and in truth" by performing the service commanded of them and we worship him in the same manner by doing the same work they did.

The events of recent years, together with the present conditions and what the nations are now doing prove conclusively that we are living in the last days just proceeding the battle of Armageddon and therefore the most urgent need of the people at this time is an understanding of the scripture and knowledge of the impending destrustion and the provision God has made to escape that destruction. [fol. 37] In order to get this information to the people we use the printed pages, recorded bible lectures which we reproduce on portable phonographs, by oral discussion of the scriptures and bible studies in halls and private homes. No charges are ever made and no collections are taken for these services. There are hundreds of people in and around Fort Smith who could testify to this. When we meet people who are too poor to contribute for the literature but sincerely desire to read it we give it them freely. Our work is entirely charitable and prompted by an unselfish desire

to do good unto the people. We have consecrated our lives to serve God and it is our duty to tell the people of God's gracious provision for man's protection and Salvation in his Kingdom under Christ. Without such knowledge the people would perish as stated by the prophet in these words. Hosea 4:6 "My people are destroyed for lack of knowledge: because thou hast rejected knowledge, I will also reject thee, that thou shalt be no priest to me: seeing thou hast forgotten the law of thy God, I will also forget thy children."

To the charge that the Watch Tower Society makes money from our work we answer that there are many religious organizations in the land that own property in any one of our large cities which is valued at much more than all the property owned by the Watch Tower Society in the whole earth.

[fol. 38] IN CIRCUIT COURT OF SEBASTIAN COUNTY

PLAINTIFF'S REQUEST FOR FINDINGS OF FACT AND LAW—Filed November 2, 1940

The above three cases having been consolidated for trial and submitted to the court upon the agreed statement of facts, comes now the city of Fort Smith, Arkansas, and requests the court to make the following findings of fact:

I

That the defendant, H. D. Cole, was on the date mentioned passing out and selling handbills advertising a convention.

(Given by the court.)

II

That the defendant, H. D. Cole, on said date and at said time he was engaged in said practice did not have a tax receipt issued by the city of Fort Smith, Arkansas, indicating that he had paid a tax to engage in such practice.

(Given by the court.)

III

That the defendants, Lois Bowden and Zada Sanders, and each of them, were on the dates mentioned engaged in peddling books.

(Given by the court.)

IV

That such books are embraced by the words "other articles" as set forth in Section 40 of Ordinance No. 1172.

(Given by the court.)

V

That the defendants, Lois Bowden and Zada Sanders, and each of them, on the dates mentioned and at the time they were so engaged did not have a tax receipt showing that they had secured a license from the city of Fort Smith, Arkansas, to engage in such practice.

(Given by the court.)

[fol. 39] And the city of Fort Smith, Arkansas, further requests that the court make the following findings of law:

1. That the defendant, H. D. Cole, was first required to pay a tax before engaging in the distribution of handbills and that said tax should have been paid to the city of Fort Smith, Arkansas, under the terms of Ordinance No. 1568.

(Given by the court.)

2. That the defendants, Lois Bowden and Zada Sanders, and each of them, were required before engaging in the sale and peddling of said books to first procure a license from the city of Fort Smith, Arkansas, for the privilege of so doing under the terms and conditions of Ordinance No. 1172.

(Given by the court.)

Respectfully submitted, city of Fort Smith, Arkansas, by Lem C. Bryan.

[File endorsement omitted.]

[fol. 40] In Circuit Court of Sebastian County

Defendants' Request for Finding of Facts and Declaration of Law—Filed November 2, 1940

Comes now each of the above named defendants and requests the court to find from the stipulation filed as the evidence herein the following facts:

1. Each of the defendants is a member of a company of men and women known as Jehovah's Witnesses. Jehovah

witnesses are not a religious sect or denomination but are a company of Christian men and women who have individually taken their stand on the side of the Lord and who jointly go forward in obedience to his commandment to publish the Theocratic Government and to make known to the sincere people of earth God's Gracious provision for man's salvation.

(Given by the court.)

2. Each of the defendants claims to be an ordained minister of the gospel and claims that the authority of ordination or commission of Jehovah's witnesses is given to them exclusively by Jehovah God and through Christ Jesus the King of Theocracy. Their ordination or commission of authority was first conferred upon Christ Jesus, and through him extends to all his true followers and to which the following commission applies, to-wit:

"The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn.—Isa. 61: 1, 2."

(Given by the Court.)

3. (They do not engage in this work for any selfish reason but because) they feel called to publish the news and preach the gospel of the kingdom to all the world as a witness before the end comes. Matt: 24: 14. They believe that in [fol. 41] doing this they are engaged in work that the Almighty God declared must be done. To them the words "to preach" means to proclaim or publish. They claim to be publishers of the message of Jehovah making known his name and his government. Such publication is done by word of mouth, by distribution of the printed message, by the reproduction of recorded speech, by means of electrical transcription and phonographs and by the radio. They believe that the only effective way to preach is to go from house to house and make personal contact with the people and distribute to them books and pamphlets setting forth their views of Christianity.

(Words in parenthesis refused. Given as modified.)

4. In order to carry on this work they have organized three corporations namely, The Peoples' Pulpit Association, The Watch Tower Bible and Tract Society, Inc., and the International Bible Students Association, which corporations publish the books and pamphlets setting forth the views of Jehovah's Witnesses. (They make no profits from this work but do same at a loss.)

(Words in parenthesis refused. Given by the court as modified.)

5. Their beliefs are more particularly set out in their Articles of Faith which appear as Exhibit "C" to the stipulation filed herein.

(Given by the court.)

6. The defendant, H. D. Cole, was arrested and convicted on a charge of distributing handbills in the city of Fort Smith without a license. The handbills in question have information concerning a convention to be held in Columbus, Ohio, and other large cities simultaneously and extended an invitation to all persons interested to attend. These handbills were not distributed by said defendant separately, but were enclosed in a paper magazine, "Consolation", setting forth the views of Christianity as held by Jehovah's Witnesses and was being offered to the public by said defendant upon a contribution of five cents per copy. [fol. 42] There is no evidence in the record that the defendant placed the handbills in the magazine (or knew at the time he was offering said magazines to the public that they were in the magazine.) The defendant is not charged with the violation of any ordinance in passing out or offering to the public said magazine.

(Words in parenthesis refused. Given by the court as modified.)

7. On or about the 12th day of September, 1940, the defendant Mrs. Lois Bowden, and the defendant, Miss Zada Sanders, were going from house to house in the residential section within the city of Fort Smith playing phonograph records upon which bible lectures had been recorded at each house after having first secured permission. Also they were presenting to the residents of these houses various booklets, leaflets and perjodicals setting forth their views of Christianity held by Jehovah's Witnesses. These booklets, leaflets, and periodicals were supplied to the defendants of-

fered these books to the residents of Fort Smith upon a contribution of 25¢ for each book. The books in some incidents are distributed free when the people wishing them are unable to contribute.

(Given by the Court.)

8. Each of the above defendants was engaged in the activities as herein found by the court under the honest belief that such activities were a part of the work which they felt called upon and ordained by Jehovah God through Christ Jesus to do.

(Refused by the court.)

II

Upon the facts in this case the defendant, H. D. Cole, requests the court to make the following declarations of law in his behalf:

1. That ordinance No. 1568 of the city of Fort Smith, Arkansas, is not applicable to nor does not apply to handbills of the character charged to have been distributed by said defendant.

(Refused by the court.)

[fol. 43] 2. That the facts fail to show that said defendant has violated said ordinance.

(Refused by the court.)

3. That said ordinance is in violation of the Constitution of the State of Arkansas and of the Constitution of the United States of America and that said ordinance is in direct violation of Amendment No. 1 and Amendment No. 14 to the Constitution of the United States of America and is void.

(Refused by the court.)

III

Upon the facts in the case the defendants, Zada Sanders and Lois Bowden, request the court to make the following declarations of law in their behalf:

1. That ordinance No. 1172 of the city of Fort Smith, Arkansas, is not applicable to the facts in the case and has no application to the activities for which defendants were arrested and convicted.

(Refused by the court.)

2. That the facts fail to show that either of said defendants has violated said ordinance.

(Refused by the court.)

3. That said ordinance is in violation of the Constitution of the State of Arkansas and of the Constitution of the United States of America, and more particularly is in direct violation of Amendment No. 1 and Amendment No. 14 to the Constitution of the United States of America and is void.

(Refused by the court.)

Woolsey & McKenzie, Attorneys for defendants. By Mark E. Woolsey.

[File endorsement omitted.]

[fol. 44] IN CIRCUIT COURT OF SEBASTIAN COUNTY

ORDER SETTLING BILL OF EXCEPTIONS

Now, come the defendants on the 6th day of January, 1941, and offer the above and foregoing as their bill of exceptions in this case, and request that the same be filed and sealed and made a part of the record herein, which is accordingly done this 6th day of January, 1941.

J. Sam Wood, Judge of the Twelfth Judicial Circuit of Arkansas.

[fol. 45] Bond on appeal for $75.00 approved and filed December 7, 1940, omitted in printing.

[fol. 46] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 47] IN SUPREME COURT OF ARKANSAS

JUDGMENT—June 9, 1941

This cause came on to be heard upon the transcript of the record of the circuit court of Sebastian County, Ft. Smith District, and was argued by counsel; on consideration whereof it is the opinion of the court that there is error in the proceedings and judgment of said circuit court in this

cause in this: As to the appellant H. D. Cole, Ordinance No. 1568, under which the information was filed, is void.

It is therefore considered by the court that as to appellant H. D. Cole, the judgment of said circuit court in this cause rendered be, and the same is hereby, for the error aforesaid, reversed, annulled and set aside with costs; and that this cause as to said appellant be, and it is hereby, dismissed.

But it is further the opinion of the court that as to appellants Lois Bowden and Zada Sanders, there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the court that the judgment of said circuit court in this cause rendered, as to said appellants, be, and the same is hereby in all things affirmed with costs.

It is further considered that said appellant H. D. Cole recover of said appellee all his costs in this court and the court below in this cause expended and have execution thereof; and that said appellee recover of said appellants Bowden and Sanders, all its costs in this court in this cause expended, and have execution thereof.

[fol. 48] IN SUPREME COURT OF ARKANSAS

COLE

v.

CITY OF FORT SMITH

OPINION—June 9, 1941

HOLT, J.:

Appellant, H. D. Cole, was convicted in the municipal court of Fort Smith, Arkansas, for an alleged violation of the provisions of ordinance No. 1568 of that city. Appellants, Lois Bowden and Zada Sanders, were convicted in the same court for a violation of ordinance No. 1172. On appeal to the circuit court a jury was waived, and, by agreement, the causes were consolidated for trial and submitted to the court. Appellants were again convicted and fines assessed. This appeal followed.

That part of the ordinance under which H. D. Cole was convicted, is as follows: "Item 10. Advertising: Distribu-

tors of circulars, handbills, samples or other advertising matter, $25 per annum, $5 per month, $1 per day; and each person engaging in distributing such advertising matter, whether upon his own account or as an agent, servant, or employee, shall pay said tax and shall keep in his or her possession, while so engaged, a receipt for said tax and exhibit same to the officers of the city upon demand". Violation of this ordinance under another section is made a misdemeanor and punishable by fine.

And the ordinance under which Lois Bowden and Zada Sanders were convicted, provides: "Section 1. That the license hereinafter named shall be fixed and imposed and collected at the following rates and sums and it shall be unlawful for any person or persons to exercise or pursue any of the following vocations of business in the city of Fort Smith, Arkansas, without first having obtained a license therefor from the city clerk and having paid for the same in gold, silver or United States currency as hereinafter provided. * * * Section 40. For each person peddling dry goods, notion, wearing apparel, household goods or other articles, not herein or otherwise specifically mentioned, $25 per month, $10 per week, $2.50 per day. A person, firm or corporation using two or more men in [fol. 49] their peddling business $50 per annum." Section 3 makes a violation a misdemeanor.

These causes are submitted on an agreed statement of facts:

Each of the appellants is a member of what is known as Jehovah's Witnesses, which is not a religious sect. Appellants claim to be ordained ministers of the gospel and that the authority of ordination or commission of Jehovah's Witnesses is given to them exclusively by Jehovah God. "They do not engage in this work for any selfish reason, but because they feel called to publish the news and preach the gospel of the Kingdom to all the world as a witness before the end comes. (Matt. 24: 14). They believe that in doing this they are engaged in work that the Almighty God declared must be done. To them the words 'to preach' mean to proclaim or publish. They claim to be publishers of the message of Jehovah making known His name and His government. Such publication is done by word of mouth, by distribution of the printed message, by the reproduction of recorded speech, by means of electrical transcription and

phonographs and by the radio. They believe that the only effective way to preach is to go from house to house and make personal contact with the people and distribute to them books and pamphlets setting forth their views of Christianity".

Appellant Cole on June 15, 1940, went about on the streets of Fort Smith selling "a paper magazine 'Consolation' setting forth their views of Christianity as held by Jehovah's Witnesses upon the contribution of five cents. Enclosed in the magazine was a printed handbill giving information concerning a convention and extending an invitation to all interested to attend. This was a convention to be held in Columbus and other large cities simultaneously. The police officers of the city asked the price of the magazine. The defendant Cole stated that anyone who would contribute a nickel could have a copy. The defendant had no privilege license issued by the city of Fort Smith for passing out and selling handbills. * * *."

Appellants, Lois Bowden and Zada Sanders, on Septem- [fol. 50] ber 12, 1940, "were going from house to house in the residential section within the city of Fort Smith playing phonograph records upon which Bible lectures had been recorded at each house after having first secured permission. Also they were presenting to the residents of these houses various booklets, leaflets and periodicals setting forth their views of Christianity held by Jehovah's Witnesses. * * * These defendants undertook to distribute these books to the residents of the city soliciting at the same time contribution of twenty-five cents for each book. * * * These books in some instances are distributed free when the people wishing them are unable to contribute. * * *"

Appellants earnestly urge here that the ordinances under which they were convicted violated their rights under the Constitution of the United States in abridging the freedom of the press and prohibiting a free exercise of their religion.

Amendment No. 1 to the Constitution of the United States provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances".

And Sec. 1 of Amendment No. 14 is: "All persons born or naturalized in the United States, and subject to the

jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

We take up first for consideration the charge against appellant Cole. Is the ordinance under which this appellant was convicted unconstitutional and therefore void? It is [fol. 51] our view that it is unconstitutional and void.

As was said by the United States Supreme Court in Lovell v. Griffin, 82 Law. ed. 949, 953: "Freedom of speech and freedom of the press, which are protected by the First Amendment from infringement by Congress, are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by state action. (Citing cases.) "It is also well settled that municipal ordinances adopted under state authority constitute state action and are within the prohibition of the amendment. (Citing cases.) * * * The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. * * *"

It will be observed from the agreed statement of facts, and the trial court so found, that "the defendant, H. D. Cole, is not charged with the violation of any ordinance in passing out or offering to the public said magazine 'Consolation'". He was convicted for distributing the circulars or handbills enclosed in the magazine, which magazine only he was selling for five cents per copy.

Under the plain terms of the ordinance in question it is made an offense punishable by fine, for any one to distribute circulars or handbills on the streets of Fort Smith without first having paid for a license to distribute them. The ordinance says nothing about distributing for profit nor is there any reference to peddling or engaging in a business such as referred to in the ordinance under which the other two appellants were convicted.

In the comparatively recent case of Schneider v. Irvington, decided by the Supreme Court of the United States November 22, 1939, 308 U. S. 147, 84 Law. ed. 155, the court had before it for joint consideration four causes, each of which presented the question whether regulations em-

bodied in a municipal ordinance abridged the freedom of speech and of the press secured against state invasion by the Fourteenth Amendment to the Constitution.

The first ordinance considered was that of the city of [fol. 52] Los Angeles, California, which provided "No person shall distribute any handbill to or among pedestrians along or upon any street, sidewalk, or park, or to passengers on any street car, or throw, place or attach any handbill in, to or upon any automobile or other vehicle". Ordinances similar in effect were considered from the cities of Milwaukee, Wisconsin, Worcester, Massachusetts, and Irvington, New Jersey.

The Los Angeles ordinance was upheld by the highest court of California on the ground "that experience shows littering of the streets results from the indiscriminate distribution of handbills."

The Wilwaukee ordinance was held valid by the highest court of that state on the ground that "the purpose of the ordinance was to prevent an unsightly, untidy and offensive condition of the sidewalks".

The Worcester ordinance was upheld by the highest court of that state on similar grounds.

The ordinance of the town of Irvington, New Jersey, provides: "No person except as in this ordinance provided shall canvass, solicit, distribute circulars, or other matter, or call from house to house in the town of Irvington without first having reported to and received a written permit from the chief of police or the officer in charge of police headquarters". The Supreme Court of that state held: "that the petitioner's conduct amounted to the solicitation and acceptance of money contributions without a permit, and held the ordinance prohibiting such action a valid regulation, aimed at protecting occupants and others from disturbance and annoyance and preventing unknown strangers from visiting houses by day and night."

In holding each of these four ordinances unconstitutional and void, and reversing the judgment in each case, the Supreme Court of the United States, among other things, said:

"The motive of the legislation under attack in Numbers 13, 18 and 29, (the Los Angeles, Milwaukee and Worcester [fol. 53] cases), is held by the court below to be the prevention of littering of the streets, and, although the alleged

offenders were not charged with themselves scattering paper in the streets, their convictions were sustained upon the theory that distribution by them encouraged or resulted in such littering. We are of the opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. This constitutional protection does not deprive a city of all power to prevent street littering. There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets."

There is no contention that the ordinance under which Cole was convicted was intended to prevent the littering of the streets. As has been indicated, the ordinance denied to appellant the right to distribute the circulars in question without first having paid for a license.

The opinion in the Irvington case, supra, is concluded with this language: "We are not to be taken as holding that commercial soliciting and canvassing may not be subjected to such regulation as the ordinance requires. Nor do we hold that the town may not fix reasonable hours when canvassing may be done by persons having such objects as the petitioner. Doubtless there are other features of such activities which may be regulated in the public interest without prior licensing or other invasion of constitutional liberty. We do hold, however, that the ordinance in question, as applied to the petitioner's conduct, is void, and she cannot be punished for acting without a permit. The judgment in each case is reversed and the causes are remanded for further proceedings not inconsistent with this opinion". [fol. 54] We come now to a consideration of the charges against appellants, Lois Bowden and Zada Sanders, for violating ordinance No. 1172. Under this ordinance these two appellants were charged with carrying on the business of peddling religious books at twenty-five cents per copy without first having procured a license. We think it clear that this ordinance is broad enough to embrace the character of goods, under the term "other articles", that appel-

lants were peddling, under the facts presented. We think it can make no difference as to what motives, religious or otherwise, that may have prompted appellants to peddle these books. We think there is no inhibition in the Constitution of the United States against the imposition of the license imposed by the ordinance in question. A similar question was presented in the case of Cook v. City of Harrison, 180 Ark. 546, in which one of Jehovah's Witnesses had appealed from a conviction of violating an ordinance of the city of Harrison, the applicable provisions of which were:

"That it shall be unlawful for any person or persons to engage in, exercise or pursue any of the following avocations or businesses without first having obtained and paid for a license therefor from the proper city officials, the amount of which license is hereby fixed as follows to-wit: * * * Section 13. For each book, picture or picture frame peddler, five dollars per month, or twenty-five dollars per year. * * * Section 31. Whoever shall engage in any business for which a license is required by this ordinance, without first obtaining and paying for same as above required, shall be deemed guilty of misdemeanor, and upon conviction shall be fined in any sum not exceeding $300."

The facts in this Harrison case are in all respects similar to those presented here. There this court said: "The gist of appellants' contention for a reversal of the judgment is that the ordinance does not forbid the hawking or peddling of religious tracts, or books, especially if the parties distributing them are prompted by religious mo- [fol. 55] tives. We find no such exception in the ordinance. No distinction appears in the ordinance between the character of books distributed or the motives prompting the distribution thereof. The Constitution of the state authorizes the imposition of a tax or license on hawkers or peddlers, irrespective of the kind of goods, wares or merchandise distributed by them, and there is no inhibition in the Constitution of the United States against the imposition of a tax or license upon them. The imposition of such a tax is not an abridgment of religious freedom or an infringement upon the constitutional guaranty of religious liberty."

We do not think the case of Lovell v. Griffin, 58 S. Ct. 666, 303 U. S. 444, 82 L. Ed. 949, controls here. The pro-

visions of the ordinance considered there were materially different from the one before us. We think the case of Cook v. City of Harrison, supra, controls here and that the ordinance under which appellants, Lois Bowden and Zada Sanders, were convicted is valid and constitutional and must stand. Accordingly the judgment as to appellant, H. D. Cole, is reversed and the cause dismissed. As to appellants, Lois Bowden and Zada Sanders, the judgments are affirmed.

[fol. 56] IN SUPREME COURT OF ARKANSAS

No. 4203

H. D. COLE, et al., Appellants,

vs.

CITY OF FORT SMITH, ARKANSAS, Appellee

PETITION FOR STAY OF MANDATE AND EXECUTION—Filed June 30, 1941

Come now Zada Sanders and Lois Bowden, appellants, in the above and foregoing cause, and state that they desire to appeal this case to the Supreme Court of the United States. That pending the preparation of the record by the clerk of this court appellants desire the court to hold the mandate herein and supersede the execution of the judgment in this cause for a period of ninety days, or for such time as may be necessary for the clerk of this court to prepare and certify this record. That appellants have filed a bond to perform the judgment of the court below, herein affirmed, in the event said judgment is affirmed on appeal to the Supreme Court of the United States.

Wherefore, the appellants pray the court to hold said mandate and stay execution in the judgment of the cause for a period of ninety days or until the clerk of this court can prepare and certify the record of the cause to file in the Supreme Court of the United States. And for all other and proper and general relief as to the court may seem *mete* and proper.

Mark E. Woolsey, Attorney for Appellants.

Mandate ordered withheld to allow time for appeal to Supreme Court of United States.

Griffin Smith, Chief Justice Arkansas Supreme Court.

[File endorsement omitted.]

[fols. 57-58] Bond on appeal for $500.00 approved and filed June 30, 1941, omitted in printing.

[fol. 59] Clerk's Certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1941

No. 314

ORDER ALLOWING CERTIORARI—March 16, 1942

On Petition for Writ of Certiorari to the Supreme Court of the State of Arkansas

It is ordered that the order denying certiorari in this case be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted, and the case is assigned for argument immediately following No. 966, Johin v. State of Arizona.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Number 314

■

LOIS BOWDEN and ZADA SANDERS
Petitioners

v.

CITY OF FORT SMITH, ARKANSAS
Respondent

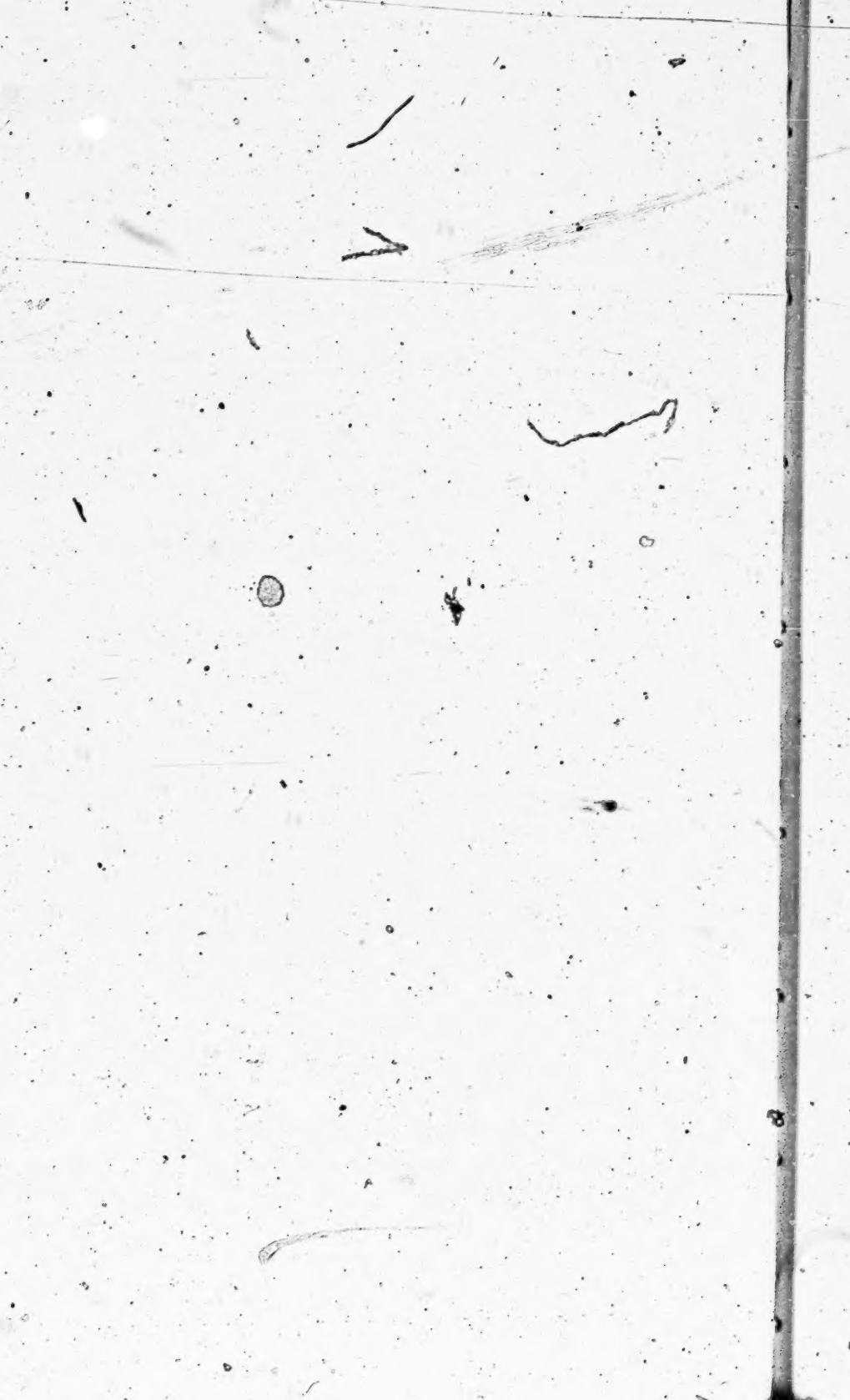
■

Petition for Writ of Certiorari to the Supreme Court of Arkansas

JOSEPH F. RUTHERFORD

HAYDEN COVINGTON

Attorneys for Petitioners



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Number

■

LOIS BOWDEN and ZADA SANDERS
Petitioners

v.

CITY OF FORT SMITH, ARKANSAS
Respondent

■

Petition for Writ of Certiorari to the Supreme Court of Arkansas

To the SUPREME COURT OF THE UNITED STATES OF AMERICA:

The petition of Lois Bowden and Zada Sanders shows to the Supreme Court of the United States as follows:

A

Summary Statement of Matters Involved

1. *Statement of Facts.*

The petitioners are ordained ministers of Jehovah God and known as Jehovah's witnesses.

This is a criminal action. The petitioners were arrested

on the 12th day of September, 1940, in the city of Fort Smith, Arkansas, and charged with an alleged violation of a peddling ordinance of that city.

They were charged and tried and convicted separately in the Municipal Court of Fort Smith and took separate appeals to the Sebastian Circuit Court, Fort Smith District thereof. The transcript of the appeals duly taken from the judgments convicting them of a violation of said peddling ordinance appears in the record. (R. 2-4) The hearing in Circuit Court was *de novo* at which time the case was submitted to the judge of the court, without a jury, on stipulated facts. The cases of the two petitioners and that of H. D. Cole, charged with violation of an ordinance prohibiting the distribution of handbills in the city on the streets, were consolidated and all three heard as one case. (R. 6, 7)

The hearing in the Circuit Court was had on October 25, 1940, upon an agreed statement of facts.

The substance of the stipulated facts upon which the case against the two petitioners is based is, to wit:

On or about the 12th day of September, 1940, the petitioners, Mrs. Lois Bowden and Miss Zada Sanders, were going from house to house in the residential section within the City of Fort Smith playing phonograph records upon which Bible lectures had been recorded at each house after having first secured permission. Also they were presenting to the residents of these houses various booklets, leaflets and periodicals setting forth their views of Christianity held by Jehovah's witnesses. These booklets, leaflets and periodicals were supplied to the defendants by the Watch Tower Bible and Tract Society at a stipulated price which these individual defendants paid before the books were delivered from the Watch Tower Bible and Tract Society of Brooklyn, New York. These defendants undertook to distribute these books to the residents of the City soliciting at the same time contribution of twenty-five cents ($0.25) for each book. Within the covers of these books setting forth the views of Christianity as held by Jehovah's witnesses is an adver-

tisement or announcement setting forth the rates for which the books may be purchased in numbers from the Watch Tower Bible and Tract Society of Brooklyn, New York. These books in some instances are distributed free when the people wishing them are unable to contribute. Neither of these defendants had any license of any nature from the City of Fort Smith to distribute handbills or to sell or distribute books.

The literature in question was introduced in evidence as exhibits and clearly shows that it is devoted exclusively to explanation of Bible prophecy. The contents of this literature related to a revelation of said prophecies, recorded centuries ago, as they are now being fulfilled. The literature further showed that the time is near at hand when Jehovah, the Almighty God, will completely destroy Satan and his entire organization, consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty" at Armageddon; which destruction shall be immediately followed by a complete establishment of God's Kingdom throughout the entire earth, to bring everlasting peace, joy, prosperity, happiness and everlasting life to all survivors of Armageddon and eventually also to many who have died in times past and who shall be resurrected to live forever upon earth. The contents, in part, are admittedly an attack upon religion as practiced today and at all times since man has been upon earth, but at the same time such books clearly set forth the true distinction between all organized religion and the true worship or service of Almighty God, which is Christianity. Such books thereby expose religion as a snare and a racket of the very worst kind, and that religion is in no way related to or a part of Christianity. For further explanation see the exhibits.

Petitioners did not apply for or obtain a license because as testified by them they were ordained ministers of Jehovah God preaching the Gospel in the exact manner commanded by Him and following in the footsteps of the Lord Jesus and the apostles, and to apply for a permit to do

what Jehovah God commands them to do would be an insult to Almighty God, a violation of His law, which would result in their everlasting destruction. The petitioners testified that each as commanded by the Bible, 'chose to obey God rather than man.'—Acts 20:20.

The stipulated facts together with Exhibit B, ordinance in question, and Exhibit C, "Articles of Faith," appear in the printed record. R. 10-24.

At the conclusion of such hearing on October 25, 1941, the judge of the Circuit Court took the cases under advisement and on the 25th day of November, 1940, rendered judgment refusing petitioners' requested findings, overruling their motion to dismiss and adjudging petitioners guilty of violating the said ordinance 1172 of the City of Fort Smith, and assessed a fine of $5.00 against each petitioner. R. 8, 9.

Petitioners then timely filed their motion for new trial, complaining that the judgment should be set aside and a new trial granted. (R. 7, 8) The motion for new trial was overruled and an appeal allowed. R. 8.

In due time the appeals of the two petitioners and said Cole were jointly heard by the Supreme Court of Arkansas. On the 9th day of June, 1941, the said Supreme Court rendered a judgment affirming the Circuit Court's judgment of conviction of the petitioners and reversing the conviction of Cole. (R. 29, 30) On such date the said Supreme Court also filed its opinion giving its reasons for so affirming the case against petitioners and stating that the ordinance was applicable to petitioners, had not been wrongly applied, and that petitioners were not unlawfully deprived of any constitutional rights contrary to the due process clause of the Fourteenth Amendment. (R. 30-37)

2. *Statute here drawn in question.*

The legislation here drawn in question is an ordinance of the City of Fort Smith, Arkansas, that was applied to the petitioners, pertinently in part, as follows:

Ordinance No. 1172 for the violation of which the appellants, Lois Bowden and Zada Sanders, were convicted is as follows:

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF FORT SMITH:

Section 1. That the license hereinafter named shall be fixed and imposed and collected at the following rates and sums and it shall be unlawful for any person or persons to exercise or pursue any of the following vocations of business in the City of Fort Smith, Arkansas, without first having obtained a license therefor from the City Clerk and having paid for the same in gold, silver or United States currency as hereinafter provided.

Section 40. For each person peddling dry goods, notions, wearing apparel, household goods or other articles not herein or otherwise specifically mentioned $25.00 per month, $10.00 per week, $2.50 per day. A person, firm or corporation using two or more men in their peddling business $50.00 per annum.

Section 3 makes a violation a misdemeanor.

The ordinance is Exhibit B to the agreed statement of facts and appears in the record. R. 14-15.

3. *Substantial Federal Questions Presented.*

By motion to dismiss duly filed in the Municipal Court, petitioners raised the Federal questions here presented, asserting that the ordinance was in violation of the Fourteenth Amendment to the United States Constitution in that the ordinance as construed and applied denied and deprived the petitioner of his rights of freedom of speech, of press and of worship of Almighty God contrary to the aforesaid Amendment to the United States Constitution. (R. 2-4) The said Municipal Court duly considered and passed upon such questions and specifically held that the ordinance was applicable and that petitioners were not de-

nied their rights of speech, of press and of worship. R. 2-4.

At the close of all the evidence on the trial de novo in the Circuit Court before the judge, without a jury, on October 25, 1940, the petitioners duly filed in writing their motion to dismiss the charges on the grounds that the ordinance in question under which the complaints had been filed had no application to the facts and that as applied was void and unconstitutional in that it deprived the petitioners of their rights of speech, of press and of worship contrary to the Fourteenth Amendment to the United States Constitution. (R. 3-5) The Circuit Court denied the motion to dismiss and held that the ordinance properly covered the petitioners and as construed and applied did not deprive the petitioners of said rights contrary to the Constitution and was therefore constitutional. R. 8, 9.

Also, petitioners duly filed their request for findings that the ordinance did not apply and for claims or declarations of law that if applied it would not deprive petitioners of their constitutional rights contrary to the Fourteenth Amendment to the United States Constitution. These requests were likewise denied.

In their motion for new trial duly filed in the Circuit Court complaint is specifically made as to the action of the court in overruling the motion to dismiss and refusing the above requests and that the judgment was contrary to law. R. 7, 8.

These federal questions were properly and duly preserved by the petitioners in harmony with the practice of the State of Arkansas.

Through the appeal taken from the Circuit Court to the Supreme Court of Arkansas and the entire record of the case, the specific points of law or federal questions above described were urged in the proper manner by petitioners in said Supreme Court of Arkansas.

The Supreme Court of Arkansas specifically overruled each of the claims of law made by petitioners and overruled each federal question presented to it in due form by peti-

tioners and specifically held that the ordinance was applicable and that the petitioners were not denied their rights of freedom of speech, of press and of worship contrary to the Fourteenth Amendment to the United States Constitution. (R. 30-37) [Opinion]

Therefore there are presented to this Court for review substantial Federal questions as follows:

Is the ordinance in question as construed and applied by the court below violative of the Fourteenth Amendment to the United States Constitution in that it abridges and denies petitioners' rights of freedom of speech, of press and of worship of Almighty God secured and included within the "due process" clause of said Amendment?

B

Reasons Relied on for Allowance of Writ

The questions presented here are of national importance and basically affect the fundamental personal and civil rights of every person domiciled within the United States. The Supreme Court of Arkansas has rendered a decision on a most important Federal question in a way that nullifies the Constitutional guarantees and provisions with respect to personal freedom. The opinion of that court has misconstrued opinions of this Court and warped them so as to deprive them of their true meaning for the purpose of amputating the petitioners' freedom. The opinion and decision of the Arkansas Supreme Court is in direct conflict with applicable decisions of this Court. Such court has radically and so far departed from the accepted and usual course of judicial proceedings as to demand an order of this Court halting such extraordinary departure from established principles of liberty and constitutional law. In effect the opinion and decision has placed a "foreign amendment" upon the Constitution without "due process". It is based upon the sophistry that streets be-

long to the public and activity thereon can be licensed. It is founded on the proposition that freedom of the press means "free-of-charge distribution" and does not cover "sale" or exchange for contributions. The opinion is directly contrary to the opinions of this court, which express the applicable American rule.

The decision and opinion is grounded upon the case of *Cook* v. *City of Harrison*, 180 Ark. 546, 21 S.W. 2d 966, to support its contention that petitioners were peddlers, and thus not entitled to the constitutional veil of protection. This case is obviously not directly in point; furthermore we submit that the *Cook* case, supra, is contrary to the Constitution and applicable opinions of this Court, and has been overruled by late decisions of this Court. This contention is similar to that made in *Manchester* v. *Leiby*, 117 F. 2d 661 (certiorari denied 61 S. Ct. 838). The ordinance involved in the *Leiby* case was not at all in point with the ordinance here questioned. Furthermore we submit that the *Leiby* opinion by the First Circuit Court of Appeals is contrary to the Constitution and applicable opinions by this Court. We say that the denial by this Court of the petition for certiorari on April 7, 1941, did not constitute an approval by this Court of the reasoning expressed in the opinion and did not constitute approval of the holding that the ordinance there involved was valid. This Court has repeatedly said that the denial of certiorari does not amount to an approval of the merits or reasoning of the court below. See *United States* v. *Carver*, 260 U. S. 482, 490; *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U. S. 251, 258; *Ohio ex rel. Seney* v. *Swift & Co.*, 260 U. S. 146, 151; *Atlantic Coast L. R. Co.* v. *Powe*, 283 U. S. 401, 403.

If the contention of the Supreme Court of Arkansas be sustained, that freedom of the press means only *free* distribution of literature and that when money is received for literature the distribution can be regulated by requiring a permit under a peddlers ordinance, then the *end* of free

press and constitutional guarantee thereof is a reality. If such *were* the true American rule (which it is not), then the exercise of the rights "so vital to maintenance of democratic institutions" would become the prerogative of the well-to-do and wealthy class. This would be the equivalent of no free press at all. Such a rule cannot be consistently upheld in face of the Constitution.

The holding of the Arkansas Supreme Court (to the effect that the preaching of the gospel of God's Kingdom through distribution of printed literature for which *contributions were received* when done on the streets of the City of Fort Smith is not entitled to the protection of the Constitutional guarantees against a lication of an ordinance requiring the licensing of "peddling of dry goods and other articles not mentioned herein") is new, a theory entirely foreign to American life and sound pioneer jurisprudence established by our forefathers, which theory should be contradicted and eradicated by this Court before more devastating consequences result. The Court below held that the guarantee of freedom of the press does not extend to "sale" of printed information and opinion, i.e., if money was accepted for the literature distributed, that such transaction took the matter beyond the reach of the Fourteenth Amendment to the United States Constitution. This identical contention was made by the Supreme Court of Errors of the State of Connecticut in the *Cantwell* case, 310 U. S. 296, which contention was expressly rejected by this Court as foreign.

Petitioners were engaged in the circulation of printed matter containing information about the Kingdom of Almighty God which is shortly to be established on the earth and also containing Bible explanations of present conditions of distress and perplexity prevalent in the earth. There is no distinction or difference between this case and the cases of *Schneider* v. *Town of Irvington*, 308 U. S. 147, *Lovell* v. *Griffin*, 303 U. S. 444, and *Cantwell* v. *Connecticut*, supra, all of which announce the Constitutional guarantee

as to the activity of these petitioners. The Arkansas Supreme Court ruled directly in conflict with the above decisions and strained at a distinction which is impossible to reach when viewed in the light of this Court's prior rulings.

The court below relies mainly upon *Cook* v. *City of Harrison*, supra, on the theory that such case said it was "the sale which could be regulated".

Another reason relied upon for the allowance of the writ is the fact that petitioners are ordained ministers of the Gospel of the Kingdom of Almighty God and as such ministers they do not come within the provisions of the ordinance because they preach by publicly distributing literature from house to house, and from some who take the literature they receive contributions to aid in printing and distributing more like literature. It cannot be said by anyone, not even this Court, that such does not constitute "preaching the Gospel". Jesus Christ's apostles each and all taught and preached publicly and from house to house. (Acts 20: 20) See also Proverbs 1: 20, 21.

The activity of preaching the Gospel thus cannot be regulated by permit from municipality or state even when carried on from house to house, because distribution from house to house of recorded communications has been held from time immemorial as the natural and appropriate way of disseminating information and opinion and the most effective means of reaching the people. See *Schneider* v. *State*, supra.

Furthermore, the ordinance in question confers arbitrary and discriminatory powers of *"prior censorship of press"* upon the City Clerk and confers upon the City Clerk the unlimited and arbitrary power of revocation of licenses without notice. Thus the ordinance is void on its face because it attempts to regulate the press activity of all persons dealing in books or booklets within the city.

Wherefore your petitioners pray that this Court issue a writ of certiorari to the Supreme Court of Arkansas directing such court to certify to this Court for review and

determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on the docket of said court; and that the decree of the court be reversed and that your petitioners may have such other and further relief in the premises as to this Court may seem just and proper under the circumstances.

LOIS BOWDEN
ZADA SANDERS
Petitioners

By
JOSEPH F. RUTHERFORD
HAYDEN COVINGTON
Attorneys for Petitioners

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

A
Opinion of the Court Below

The opinion of the Supreme Court of Arkansas, at time of this writing, is not officially reported but appears in the Record at pages 30 to 37.

B
Jurisdiction

1. *Timeliness.*

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code [28 U. S. C. A. 344 (b)].

The judgment of the Supreme Court of Arkansas was rendered and entered of record on the 9th day of June, 1941. R. 29.

The petition for writ of certiorari is filed herein before the expiration of three months from the date the decree and judgment of said Supreme Court of Arkansas was rendered and entered, which is within the time allowed by law.

2. *The statute.*

The validity of state legislation under the United States Constitution was drawn into question in this case and the decisions of each of the trial courts and the Supreme Court were wrongfully in favor of its validity. The legislation challenged here is an ordinance of the City of Fort Smith, Arkansas, which was in full force and effect at the time of the transaction in question, reading in words and figures as follows:

Ordinance No. 1172 for the violation of which the appellants, Lois Bowden and Zada Sanders, were convicted is as follows:

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF FORT SMITH:

Section 1. That the license hereinafter named shall be fixed and imposed and collected at the following rates and sums and it shall be unlawful for any person or persons to exercise or pursue any of the following vocations of business in the City of Fort Smith, Arkansas, without first having obtained a license therefor from the City Clerk and having paid for the same in gold, silver or United States currency as hereinafter provided.

Section 40. For each person peddling dry goods, notions, wearing apparel, household goods or other articles not herein or otherwise specifically mentioned $25.00 per month, $10.00 per week, $2.50 per day. A person, firm or corporation using two or more men in their peddling business $50.00 per annum.

Section 3 makes a violation a misdemeanor.

In holding that the ordinance is not unconstitutional because it abridges freedom of speech, press and worship in violation of the Fourteenth Amendment to the United States Constitution, the Supreme Court of Arkansas held that the statute properly applied to the activity of petitioners and decided in favor of its validity on its face and as so applied. R. 29-37.

Petitioners duly and properly urged in all the courts below that the said ordinance on its face and especially as applied and construed to them was invalid because it deprived them of above described rights contrary to the "due process" clause of the Fourteenth Amendment to the United States Constitution.

From the very beginning, therefore, the validity of the legislation here challenged as being in contravention of

the Fourteenth Amendment was thus drawn in question. The judgments of the trial courts were in favor of the validity of such ordinance and also, the Supreme Court of Arkansas found in favor of the validity thereof, overruling such federal questions.

C

Statement of the Case

A full statement of the case has been given herein (supra, pages 1 to 7) and for the sake of brevity will not be repeated but is here referred to.

D

Specification of Errors

Petitioners assign the following errors in the record and proceedings of said case:

The Supreme Court of Arkansas committed fundamental error in affirming the judgment of the Circuit Court by ruling that the petitioners were guilty of a violation of said ordinance of the City of Fort Smith, because the said ordinance is invalid, as construed and applied by the courts below, in that it deprives petitioners of their right of freedom of press, of speech, of conscience and of worship of Almighty God as commanded by Him in the Bible, contrary to the "due process" clause of the Fourteenth Amendment to the United States Constitution.

And for these reasons it is reversible error for the Supreme Court of Arkansas to affirm the judgment of conviction rendered by the Circuit Court and hold that the statute was valid and constitutional.

The Arkansas Supreme Court erts in holding that the ordinance as applied was a proper and valid exercise of the police power.

PRELIMINARY ARGUMENT

It is to be noted that the opinion, in addition to being extremely unsound and a radical departure from the applicable decisions of this Court in *Cantwell* v. *Connecticut*, supra, *Schneider* v. *Irvington*, supra, and *Lovell* v. *Griffin*, supra, is also in direct conflict with the following opinions and decisions declaring such laws invalid as applied to the above described activity of Jehovah's witnesses in preaching the Gospel of God's Kingdom, that is to say, the cases of *People* v. *Kieran et al.*, 26 N. Y. S. 2d 291, *Tucker* v. *Randall* (N. J.), 15 A. 2d 325, *Commonwealth* v. *Anderson* (Mass.), 32 N. E. 2d 684, *City of Gaffney* v. *Putnam* (South Carolina Supreme Court opinion rendered June 2, 1941), 15 S. E. 2d 130; *Semansky* v. *Stark, Sheriff*, 199 So. 129 (Louisiana), *Thomas* v. *Atlanta*, 59 Ga. App. 520, 1 S. E. 2d 598, *Cincinnati* v. *Mosier*, 22 N. E. 2d 418; 61 Ohio App. 81, *People* v. *Northum et al.*, 103 Cal. Supp. 295, 41 C. A. 2d 284, *Village of South Holland* v. *Stein*, 26 N. E. 2d 868 (Ill.). Each of the above cases involve Jehovah's witnesses shown to have been receiving contributions for the literature and working in the same way as petitioners were; and the ordinances and laws there held to be unconstitutional are substantially similar, if not identical to the statute here drawn in question.

ARGUMENT

The ordinance in question is invalid and unconstitutional as construed and applied by the courts below in that it deprives petitioners of their right of freedom of press, of speech, of conscience and of their right to worship Almighty God as commanded by Him in the Bible, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution.

The pernicious doctrine that constitutionally secured "free press" extends only to "*free* distribution" (or "gift") of literature is a new theory unheard of until modern-day totalitarian principles have pushed to the fore. Such erroneous claim means that a person would be entitled to the protection of the constitutional guarantees of freedom of press against statutes such as this if he gave away printed matter, but if he "sold" such matter he would not be entitled to this fundamental personal privilege. The claim is, therefore, *foolish*. Newspapers, magazines and other periodicals are sold daily on the streets and elsewhere in every community of this land. Money is received in exchange. The newspaper industry is a profitable one and many have grown wealthy through it. They are entitled to all the guarantees of freedom of the press, even though they do gain great wealth through it. One who is doing good, such as the petitioners here, by constantly and continuously bringing printed matter on subjects of great importance to the attention of the public through "press activity" is entitled to let those receiving the information aid in keeping the "good work alive and going" by contributing a small sum with which to print more like literature. It is a ridiculous stalemate to hold that one must "go bankrupt" by forced "free" distribution of literature in order

to receive the "free press" protection of the Constitution. Such a reprehensible contention, if permitted to stand, means the "death toll" to freedom of press in America. The taking of money for the literature is only incidental to the main activity of petitioners. It is a means to an end, that is to say, further proclamation of the Kingdom message of Almighty God.

The theory advanced by the Arkansas Supreme Court would make constitutional guarantee of freedom of the press the sole prerogative of the rich. This would "sandbag" the Constitution and sabotage all the liberties of the people.

In the case of *Cantwell* v. *Connecticut,* supra, the Connecticut Supreme Court of Errors attempted to distinguish the conviction under the solicitation statute on the grounds that 'it was the soliciting contributions' that brought them within the terms of the statute, "and not their more predominant activity of distributing literature." That doctrine was rejected by this Court. The opinion in the instant case is also contrary to *Schneider* v. *Irvington,* supra, where the undisputed evidence showed that one of Jehovah's witnesses received money contributions for literature and was prosecuted under the ordinance "because she canvassed without a permit".

The undisputed evidence shows that the right which petitioners exercise is that of worshiping Almighty God by acting as *ordained ministers* in preaching the Gospel, and also press activity, and the action of the Fort Smith authorities in arresting and prosecuting them is in excess of their lawful authority; and it is the unconstitutional application of said statute to petitioners' activities that invalidates it.

It will be recalled that in the case of *Concordia Fire Insurance Co.* v. *Illinois,* 292 U. S. 535, 545, the court said:

> "Whether a statute is valid or invalid under the equal protection clause of the Fourteenth Amendment

> often depends on how the statute is construed and applied. It may be valid when given a particular application and invalid when given another."

The petitioners are *ordained ministers* of the gospel of God's Kingdom or Theocracy, which is a righteous governernment that will be fully established in the earth very shortly. They possess credentials showing their ordination. They have entered into a covenant or agreement with Almighty God as provided in Isaiah 61:1, 2 and other scriptures to do the will of Almighty God, which is to preach or proclaim the judgments of Almighty God and His message of hope recorded in the Bible, to all people of good-will toward Almighty God. In order to enable such persons to flee from the Devil's organization to The Theocracy, and thus receive everlasting life under such righteous government, which will bring peace, prosperity and happiness to all who survive the battle of Armageddon — near at hand — Jehovah's witnesses preach the Gospel publicly throughout the land. To enable the petitioners to effectively thus preach the Gospel 'publicly and throughout every city until the cities are desolate' (Isaiah 6:11) the petitioners use books, booklets, magazines and pamphlets which contain the entire message. This literature they employ as a substitute for talking, or sermons, and which is more effective because it can be studied by the recipients in the quiet of the home. Thus much time is saved and more people are reached.

In thus acting, the petitioners are duly ordained ministers of the Gospel of Jehovah God's Kingdom. It cannot properly be said that such conduct does not constitute proper worship or service of Almighty God. This showing is conclusive upon all concerned in the matter. Furthermore, this Court has held that the individual alone is privileged to determine what he shall or shall not believe and how he shall exercise his right of conscience in performing such belief. The law of this land does not attempt to

settle differences of creed and confession, and will not say that any point, doctrine or practice is too absurd to be believed. *Reynolds* v. *United States*, 98 U. S. 145, 162, quoting from Jefferson's Virginia Statute of Religious Freedom; also, *United States* v. *Macintosh*, 283 U. S. 605, 634.

If the practice or belief does not involve a violation of the law of morals, invade the right of property, or imperil, by clear and present danger, the safety of the nation and state, then such cannot be interfered with by any kind or character of statute, whether valid or invalid. Being bound by the conclusion that petitioners are *ordained ministers*, what is next presented?

Attention of this Court is kindly drawn to the case of *Thomas* v. *City of Atlanta*, supra, where one of Jehovah's witnesses was convicted under an ordinance prohibiting peddling without a license. In reversing the conviction, the Georgia Court of Appeals said:

> "We do not think it is the duty of an ordained minister of the gospel to register his business with the city. Neither is it peddling for such minister to go into homes and play a victrola, or to preach therein or to sell or distribute literature dealing with his faith if the owner of such home does not object. The preaching and teaching of a minister of a religious sect is not such a business as may be required to register and obtain and pay for a license so to do. Neither is a sale by such minister of tracts or books connected with his faith a violation of a statute against peddling. Under the evidence in this case the sale of the book was collateral to the main object of the defendant, which was to preach and to teach his religion."

To the same effect is *Village of South Holland* v. *Stein*, supra, *Semansky* v. *Stark*, supra, *Cincinnati* v. *Mosier*,

supra, *Schneider* v. *Irvington,* supra, *Cantwell* v. *Connecticut,* supra.

The City of Fort Smith has no more authority to require petitioners, Jehovah's witnesses, to register than it would to require religious priests, religious clergy and religious rabbis of Fort Smith to register as a condition precedent to giving their sermons and conducting their different religions in the City. It is clearly apparent that such statute cannot be applied so as to interfere with or deprive petitioners of their right of worship. This is petitioners' *way* of worship and it cannot be denied because none of the exceptions can be found to exist which would warrant the denial of such right.

The *way* of worshiping Almighty God as done by petitioners in this case is commanded by the written law of Almighty God.

God's law is supreme. This rule is recognized by Blackstone in his Commentaries (Chase 3d ed., pp. 5-7). See also Cooley's *Constitutional Limitations,* 8th ed., p. 968. Petitioners greatly desire life and to live, and therefore they must serve Almighty God; for it is written that God is the fountain of life. (Psalm 36:9) One who desires to live must obey God's law. (John 17:3) Petitioners stand in the same position as Jesus Christ's apostles who, when haled before magistrates and requested to discontinue preaching the Gospel from house to house, as they did at the time of their arrest, and when ordered to desist, told the court, "We ought to obey God rather than men." (Acts 5:17-42) Thereafter, as it is written concerning them, "daily in the temple, and in every house, they ceased not to teach and preach Jesus Christ."—Acts 5:42.

Should the petitioners cease to proclaim the written judgments of Almighty God by yielding to threats of police officials or for any other reason, they would violate the solemn agreement previously made by them to obey the law of Almighty God, who commands such proclamation to be made now, irrespective of persecution; and petitioners

would thereby subject themselves to everlasting destruction, as they verily believe. See Ezekiel 33:8, 9; Acts 3:22, 23.

The petitioners refuse to apply for a permit or license because they are *ordained ministers* of Almighty God, preaching the Gospel, and do not come within the provisions of the statute, and furthermore they choose to follow in the footsteps of the Master, Christ Jesus, and His apostles, who preached "publicly and from house to house" and who steadfastly refused to get "permits" from the "state" of their day, and refused to discontinue preaching when requested by the state to discontinue.

It would be an insult to Almighty God to apply to some man of the world, which is ruled over by Satan, for a permit or license to do that which God has *commanded* to be done under pain of everlasting death for refusal or failure on the part of Jehovah's witnesses to so preach, as He has plainly commanded.

Tested in the light of standards declared in the cases cited, the ordinance under which the petitioners were convicted cannot stand the test of the Fourteenth Amendment to the Constitution because on its face and as applied in this case there is a clear infringement by "prior censorship" of the press.

The ordinance gives the City Clerk complete control over the circulation of informative matter throughout the municipality. It is left to his discretion in granting permission based on his determination of what he considers proper.

The provision of this ordinance is very similar to the Irvington ordinance outlawed by this Court in *Schneider* v. *State*, described by this Court as inquisitorial. On authority of *Schneider* v. *State*, this ordinance should be declared invalid. In the *Schneider* case, Clara Schneider was shown to have done the same work as those petitioners were doing. Clara accepted money contributions for the books, yet this Court held that such conduct on her part did not bring her under the ordinance. The same thing was held

in *Cantwell* v. *Connecticut,* supra, also involving one of Jehovah's witnesses doing the same work as petitioners.

The pamphlets of Thomas Paine, William Lloyd Garrison, Alexander Hamilton, Martin Luther, and others, annoyed many people. It is impossible to circulate information on a vital issue without annoying someone, but such is the very life of free press and a free country and is not ground for *misapplying* a peddling-license ordinance, as is here done.

The State may not under the guise of 'reasonable police regulation' chisel off liberty of the press by subjecting that to license. The only fields of press activity which may be touched upon by law are (1) immoral and obscene matter, (2) seditious matter, (3) libel of individuals. None of these elements are found in the literature. By no stretch of the imagination can it be said that the literature comes within any of such limitations. There is nothing immoral or seditious about the literature. The undisputed evidence shows that the literature was not immoral and was not seditious. R. 10-13, 15-24.

There is no evidence that petitioners were guilty of disorderly conduct or interference with other people's rights, in distributing the literature. There is no evidence that they distributed the books or booklets at any unreasonable time. They are not charged with any of such; but even if they were, they could not be prosecuted and convicted under THIS ordinance providing for "license and tax".

Ordinances identical with this one when applied even to "sale of literature" have been rightly held invalid by courts of the world's greatest municipality (New York City). See the cases of *People* v. *Max Banks,* 6 N. Y. S. 2d 41, *People* v. *Samuel Finkelstein,* 2 N. Y. S. 2d 941, and cases cited.

Furthermore, it is clear that the activity of the petitioners was activity of the press and was and is such press activity protected by the Constitution. The homes are the

natural and proper places for the dissemination of such information (*Schneider* v. *Irvington*, supra) and this right cannot be denied or abridged on the theory that it can be better exercised elsewhere. The conveniences of the City of Fort Smith to keep desired conditions do not warrant licensing or abridgment. (*Schneider* v. *Irvington*, supra, *Cantwell* v. *Connecticut*, supra, *Hague* v. *C. I. O.*, 307 U. S. 496) The duty of the officials to maintain order does not warrant the prior censorship of the press which is permitted by the application of the statute to the facts in this case. *Hague* v. *C. I. O.*, supra, *Thornhill* v. *Alabama*, 310 U. S. 88, 95, *Grosjean* v. *American Press Company*, 297 U. S. 233, *De Jonge* v. *Oregon*, 299 U. S. 353, 364, *Stromberg* v. *California*, 299 U. S. 233, *Near* v. *Minnesota*, 283 U. S. 697, 707.

CONCLUSION

It is therefore submitted that this case is one calling for the exercise by this Court of its supervisory powers to the end that errors complained of may be corrected and that to such end a writ of certiorari ought to be granted that this Court review the decision of the Supreme Court of the State of Arkansas.

Confidently submitted,

JOSEPH F. RUTHERFORD
124 Columbia Heights
Brooklyn, New York

HAYDEN COVINGTON
117 Adams Street
Brooklyn, New York

Attorneys for Petitioners

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

No. 314

LOIS BOWDEN and ZADA SANDERS
Petitioners

v.

CITY OF FORT SMITH, ARKANSAS
Respondent

PETITIONERS' BRIEF

HAYDEN COVINGTON
Attorney for Petitioners

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PETITIONERS' BRIEF

Opinion Below

The opinion of the Arkansas Supreme Court is reported in 151 S. W. 2d 1000, and is printed in the record at pages 30 to 37. The trial court did not write an opinion.

Jurisdiction

Jurisdiction is invoked under Section 237 (b) of the Judicial Code [28 U. S. C. A. 344 (b)], by petition for writ of certiorari. On March 16, 1942, this Court on its own motion set aside its previous order denying certiorari (October 13, 1942, 62 S. Ct. 99, 314 U. S. xxii) and granted certiorari. R. ....

Timeliness

The judgment of the state court of last resort (Arkansas Supreme Court) was rendered and entered of record on

June 9, 1941. (R. 29) The petition for writ of certiorari was filed July 28, 1941, and within three months from the date of such judgment.

The Statute

The legislation here drawn in question is an ordinance of the City of Fort Smith, Arkansas, in full force and effect at the time of the transaction involved herein, material parts of which ordinance are as follows:

"ORDINANCE No. 1172

"An Ordinance Entitled an Ordinance Amending Ordinance No. 1080, Fixing and Prescribing and Establishing the Rates of Certain License in the City of Fort Smith, Arkansas, and Repealing All Ordinances in Conflict Herewith.

Be it Ordained by the Board of Commissioners of the City of Fort Smith, Arkansas:

Section 1. That the license hereinafter named shall be fixed and imposed and collected at the following rates and sums and it shall be unlawful for any person or persons to exercise or pursue any of the following vocations of business in the city of Fort Smith, Arkansas, without first having obtained a license therefor from the city clerk and having paid for the same in gold, silver or United States currency as hereinafter provided.

Section 40. For each person peddling dry goods, notions, wearing apparel, household goods or other articles not herein or otherwise specifically mentioned $25 per month, $10 per week, $2.50 per day. A person,

firm or corporation using two or more men in their peddling business $50 per annum:

Section 3. The exercise of the privileges and business professions mentioned in this ordinance without having first obtained and paid for the amount of license required and provided for by this ordinance shall be unlawful and if any person exercising any of the same without license shall be deemed guilty of a misdemeanor and on conviction in the police court shall be fined in any sum not less than $5 nor more than $25 and that each day such business is carried on in violation of this ordinance shall constitute a separate offense and the prosecution in pursuance thereof shall in no wise affect the right of the city to proceed against such person or persons violating this ordinance in a civil action."

R. 14-15.

Statement

The petitioners are ordained ministers of Jehovah God and known as Jehovah's witnesses.

This is a criminal action. The petitioners were arrested on the 12th day of September, 1940, in the city of Fort Smith, Arkansas, and charged with an alleged violation of a peddling ordinance of that city.

They were charged and tried and convicted separately in the Municipal Court of Fort Smith and took separate appeals to the Sebastian Circuit Court, Fort Smith District thereof. The transcript of the appeals duly taken from the judgments convicting them of a violation of said peddling ordinance appears in the record. (R. 2-4) The hearing in Circuit Court was *de novo* at which time the case was submitted to the judge of the court, without a jury, on stipulated facts. The cases of the two petitioners and that of H. D. Cole, charged with violation of an ordinance prohibiting the distribution of handbills in the city on the streets, were con-

solidated and all three heard as one case. (R. 6, 7)

The hearing in the Circuit Court was had on October 25, 1940, upon an agreed statement of facts.

The substance of the stipulated facts upon which the case against the two petitioners is based is, to wit:

On or about the 12th day of September, 1940, the petitioners, Mrs. Lois Bowden and Miss Zada Sanders, were going from house to house in the residential section within the City of Fort Smith playing phonograph records upon which Bible lectures had been recorded at each house after having first secured permission. Also they were presenting to the residents of these houses various booklets, leaflets and periodicals setting forth their views of Christianity held by Jehovah's witnesses. These booklets, leaflets and periodicals were supplied to the defendants by the Watch Tower Bible and Tract Society at a stipulated price which these individual defendants paid before the books were delivered from the Watch Tower Bible and Tract Society of Brooklyn, New York. These defendants undertook to distribute these books to the residents of the City soliciting at the same time contribution of twenty-five cents ($0.25) for each book. Within the covers of these books setting forth the views of Christianity as held by Jehovah's witnesses is an advertisement or announcement setting forth the rates for which the books may be purchased in numbers from the Watch Tower Bible and Tract Society of Brooklyn, New York. These books in some instances are distributed free when the people wishing them are unable to contribute. Neither of these defendants had any license of any nature from the City of Fort Smith to distribute handbills of to sell or distribute books.

The literature in question was introduced in evidence as exhibits and clearly shows that it is devoted exclusively to explanation of Bible prophecy. The contents of this literature related to a revelation of said propheeies, recorded centuries ago, as they are now being fulfilled. The literature further showed that the time is near at hand when Jehovah,

the Almighty God, will completely destroy Satan and his entire organization, consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty" at Armageddon; which destruction shall be immediately followed by a complete establishment of God's Kingdom throughout the entire earth, to bring everlasting peace, joy, prosperity, happiness and everlasting life to all survivors of Armageddon and eventually also to many who have died in times past and who shall be resurrected to live forever upon earth. The contents, in part, are admittedly an attack upon religion as practiced today and at all times since man has been upon earth, but at the same time such books clearly set forth the true distinction between all organized religion and the true worship or service of Almighty God, which is Christianity. Such books thereby expose religion as a snare and a racket of the very worst kind, and that religion is in no way related to or a part of Christianity. For further explanation see the exhibits.

The stipulated facts and the findings of the court below are that this was the method employed by the petitioners to preach the gospel of God's Kingdom as ordained ministers of Jehovah God, which they did not for a selfish purpose, nor a commercial purpose, nor for pecuniary gain, but solely that persons of good-will toward Almighty God might be provided with knowledge of the way of life everlasting. That this work was done under direction of the benevolent and charitable corporation known as the Watch Tower Bible and Tract Society.

Petitioners did not apply for or obtain a license because as testified by them they were ordained ministers of Jehovah God preaching the Gospel in the exact manner commanded by Him and following in the footsteps of the Lord Jesus and the apostles, and to apply for a permit to do what Jehovah God commands them to do would be an insult to Almighty God, a violation of His law, which would result in their everlasting destruction. The petitioners testified that each as commanded by the Bible, chose to obey

God rather than man.'—Acts 20: 20.

The stipulated facts together with Exhibit B, ordinance in question, and Exhibit C, "Articles of Faith," appear in the printed record. R. 10-24.

At the conclusion of such hearing on October 25, 1941, the judge of the Circuit Court took the cases under advisement and on the 25th day of November, 1940, rendered judgment refusing petitioners' requested findings, overruling their motion to dismiss and adjudging petitioners guilty of violating the said ordinance 1172 of the City of Fort Smith, and assessed a fine of $5.00 against each petitioner. R. 8, 9.

Petitioners then timely filed their motion for new trial, complaining that the judgment should be set aside and a new trial granted. (R. 7, 8) The motion for new trial was overruled and an appeal allowed. R. 8.

In due time the appeals of the two petitioners and said Cole were jointly heard by the Supreme Court of Arkansas. On the 9th day of June, 1941, the said Supreme Court rendered a judgment affirming the Circuit Court's judgment of conviction of the petitioners and reversing the conviction of Cole. (R. 29, 30) On such date the said Supreme Court also filed its opinion giving its reasons for so affirming the case against petitioners and stating that the ordinance was applicable to petitioners, had not been wrongly applied, and that peitioners were not unlawfully deprived of any constitutional rights contrary to the due process clause of the Fourteenth Amendment. (R. 30-37)

Federal Questions Presented

By motion to dismiss duly filed in the Municipal Court, petitioners raised the Federal questions here presented, asserting that the ordinance was in violation of the Fourteenth Amendment to the United States Constitution in that the ordinance as construed and applied denied and deprived the petitioner of his rights of freedom of speech, of press and of worship of Almighty God contrary to the

aforesaid Amendment to the United States Constitution. (R. 2-4) The said Municipal Court duly considered and passed upon such questions and specifically held that the ordinance was applicable and that petitioners were not denied their rights of speech, of press and of worship. R. 2-4.

At the close of all the evidence on the trial de novo in the Circuit Court before the judge, without a jury, on October 25, 1940, the petitioners duly filed in writing their motion to dismiss the charges on the grounds that the ordinance in question under which the complaints had been filed had no application to the facts and that as applied was void and unconstitutional in that it deprived the petitioners of their rights of speech, of press and of worship contrary to the Fourteenth Amendment to the United States Constitution. (R. 3-5) The Circuit Court denied the motion to dismiss and held that the ordinance properly covered the petitioners and as construed and applied did not deprive the petitioners of said rights contrary to the Constitution and was therefore constitutional. R. 8, 9.

Also, petitioners duly filed their request for findings that the ordinance did not apply and for claims or declarations of law that if applied it would not deprive petitioners of their constitutional rights contrary to the Fourteenth Amendment to the United States Constitution. These requests were likewise denied.

In their motion for new trial duly filed in the Circuit Court complaint is specifically made as to the action of the court in overruling the motion to dismiss and refusing the above requests and that the judgment was contrary to law. R. 7, 8.

These federal questions were properly and duly preserved by the petitioners in harmony with the practice of the State of Arkansas.

Through the appeal taken from the Circuit Court to the Supreme Court of Arkansas and the entire record of the case, the specific points of law or federal questions above described were urged in the proper manner by petitioners

in said Supreme Court of Arkansas.

The Supreme Court of Arkansas specifically overruled each of the claims of law made by petitioners and overruled each federal question presented to it in due form by petitioners and specifically held that the ordinance was applicable and that the petitioners were not denied their rights of freedom of speech, of press and of worship contrary to the Fourteenth Amendment to the United States Constitution. (R. 30-37) [Opinion]

Therefore there are presented to this Court for review substantial Federal questions as follows:

Is the ordinance in question as construed and applied by the court below violative of the Fourteenth Amendment to the United States Constitution in that it abridges and denies petitioners' rights of freedom of speech, of press and of worship of Almighty God secured and included within the "due process" clause of said Amendment?

Specification of Errors to Be Urged

Petitioners assign the following errors in the record and proceedings in said cause.

The Supreme Court of Arkansas committed reversible error in failing to hold that:

1. The ordinance unreasonably and unlawfully denies and abridges petitioners' right of freedom to worship Almighty God as by Him commanded in His written Word and according to dictates of petitioners' conscience, contrary to the United States Constitution, Fourteenth Amendment, Section 1.

2. The ordinance unreasonably and unlawfully denies and abridges petitioners' right of freedom of press, contrary to the United States Constitution, Fourteenth Amendment, Section 1.

Summary of Argument

The decision below is based on a false premise; that is to say, that freedom of press extends only to "free" or gift distribution of literature, and that the constitutional safeguard does not protect SALE of literature or the simultaneous distribution of literature and acceptance of contributions to aid in producing and distributing more like literature.

Petitioners are ordained ministers of Jehovah God regularly and exclusively engaged in preaching the gospel, and their conduct is an act of worship of Almighty God, Jehovah, not included, either expressly or by inference, within terms of the ordinance.

Acceptance of contributions for literature used to preach the gospel is collateral and secondary to the main object of petitioners to preach the gospel.

Ambassadors or ministers of Almighty God and Christ Jesus cannot be licensed or taxed by the State for the performance of their duties as such without unlawful and unconstitutional joinder of State and Church.

Exercise of the civil right to freely worship Almighty God under the constitutional safeguard cannot be taxed or licensed because the 'power to tax is the power to destroy' the right.

The ordinance as construed and applied deprives petitioners of their right of freedom to serve, or worship, Almighty God by informing others through distribution of God's recorded Word and recorded explanations thereof, in obedience to God-given commands and according to dictates of petitioners' conscience.

The ordinance as construed unlawfully and unreasonably discourages, hinders and restricts circulation and distribution of pamphlets and other literature containing information and opinion when, incidentally to distributors' main purpose, contributions are accepted by them to defray cost of distribution.

The ordinance as applied is void because it restricts and prohibits *free* distribution of pamphlets and other literature containing information and opinion.

Exercise of the CIVIL RIGHT of "press activity", as distinguished from exercise of PRIVILEGE competitively to transact commercially gainful business, cannot be licensed or taxed because to permit is to confer the 'power to destroy' the CIVIL RIGHT.

The ordinance in question is not regulatory in its aim and nature and is not a general taxing law contemplated by the United States Supreme Court in *Grosjean* v. *American Press Co.*, 297 U. S. 233, and is distinguished from decisions relied upon by respondent.

The license tax is arbitrary, discriminatory and unreasonable and has no fixed standard.

The ordinance as construed and applied unlawfully denies and abridges petitioners' right of freedom of press.

The license tax in question is a direct burden upon distribution, which must at all times be left free and unhampered. The ordinance in question cannot be distinguished from legislation outlawed by this Court in *Lovell* v. *City of Griffin*, 303 U. S. 444; *Schneider* v. *State*, 308 U. S. 147; *Grosjean* v. *American Press Co.*, supra; *Real Silk Hosiery Mills* v. *City of Portland et al.*, 268 U. S. 325, 335-336; *Sabine Robbins* v. *Shelby Co. Tax'g Dist.*, 120 U. S. 489, 494-496.

ARGUMENT

The ordinance of the City of Fort Smith in question is unconstitutional as construed and applied to petitioners because they are thereby deprived of and denied their rights of freedom of speech and of press and freedom to worship ALMIGHTY GOD, contrary to Section 1 of the Fourteenth Amendment to the United States Constitution, and because said ordinance is a direct burden upon such rights.

The Supreme Court of Arkansas manifestly has fallen into the same pit of error as did the trial court when considering the issues involved as a result of an unsuccessful attempt to jump the broad gap between—

a) police power authorizing taxation, license and regulation of sale of ordinary articles of merchandise upon the streets or from house to house, and

b) the occupation or activity of distributing on streets or at homes of the people literature containing information and opinion (simultaneously inviting and accepting money contributions to aid such work), protected by the Constitution against all sorts of State encroachment.

This gap between the two cannot be bridged or leaped over by law.

The Court's entire decision is based upon the false premise that there is no distinction between "selling" *literature* and selling ordinary articles of merchandise.

It is also based on the assumption that the license tax here is one of the ordinary forms of taxation for support of government, when, as a matter of fact, the ordinance, on its face and as construed and applied, constitutes and is

a *direct burden through license tax* upon circulation and distribution—th very life of "freedom of the press".

In all fairness to the court and in the interest of aiding the court in protecting the people of Arkansas against the assault against civil liberties made by respondent in its argument below under the guise of innocence, this brief is prepared and filed.

Respondent contends that a proper construction of the ordinance and the activity of petitioners is that it covers their activity and that said activity is "selling of merchandise" within the meaning of the ordinance. We submit that the weight of authority cited leads to and compels the opposite conclusion. Indeed this is the only construction that can be given it without having the ordinance come into collision with the Fourteenth Amendment. The only way to save the ordinance is to construe it so as not to cover petitioners' activity.

Respondent overlooks entirely the reasoning of this Court in *Schneider* v. *State*, 308 U. S. 147, where Mr. Justice Roberts said:

> "... Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."

In *Hannan* v. *Haverhill*, 120 F. 2d 87, the court said:

> "... Restrictions properly applicable to hawkers and peddlers selling ordinary articles of merchandise on the streets might not be appropriate to regulate the sale and distribution of literature of the sort offered for sale by the plaintiffs."

In the case at bar, the license tax provided for, as ap-

plied, is not at all different from the tax struck down in the case of *Grosjean* v. *American Press Co.*, 297 U. S. 697, 713-716. There the tax was based on gross receipts of the newspaper with circulation over 20,000 copies per week. Here the ordinance provides for dealers and for license tax for agents selling merchandise. Pamphlets, periodicals and newspapers are included within the meaning of the term "merchandise" by the trial court.

It is a well-known fact (of which this Court will take judicial notice) that the principal method of circulation and distribution of the large newspapers and national periodicals and magazines, weekly and monthly, is by newsboys and men, both on the streets and from house to house throughout the entire nation. This is particularly true with respect to *sale* of magazines such as "Collier's", "The Ladies Home Journal," "The Saturday Evening Post" and "Liberty". This has been the principal means of distribution of pamphlets, especially since their original use and to this day.

While casual consideration might lead one to believe that the ordinance in question is one of the 'ordinary forms of taxation for support of the government', yet a more careful consideration thereof conclusively shows that, according to construction of the Arkansas courts, it is adroitly aimed at *circulation* and can be misused to utterly destroy distribution of literature containing information and opinion.

The ordinance is of the common type *prohibiting* peddling without a license. Price for license ranges from $1 for one day upward. It also provides that persons peddling or selling upon the streets shall be required to secure a license at fees specified.

It purports to be a revenue-raising enactment.

Its real aim is, obviously, to *protect* from unwanted competition merchants maintaining locally established businesses. It relates exclusively to commercial enterprises conducted for pecuniary gain. Nevertheless, the ordinance is

of the same character as ordinances struck down when applied in other cases where the benevolent, non-commercial, non-competitive activity of Jehovah's witnesses has been involved.

It is a fundamental proposition that freedom of speech, of press and of worship is secured by the due process clause of the Fourteenth Amendment.

The undisputed evidence is that petitioners were and are ordained ministers of Jehovah God, and that their *way* of worshiping Almighty God is to preach the gospel from house to house and on the streets by distributing literature explaining God-given prophecies of the Bible.

Preaching of the gospel by them *in this manner* is not for the private, personal benefit of the individuals so preaching, or the benevolent corporation printing the literature distributed by said individuals. On the contrary, the purpose, aim and effect of their dissemination of such information through distributing said literature is to enlighten and benefit persons willing to receive and study that literature.

The undisputed evidence shows that no one connected with the printing or distributing of the literature receives or makes any private, pecuniary profit; and that the entire activity is strictly non-commercial, non-profit and non-competitive in nature and aim. And although money contributions are received by persons distributing the literature to aid in defraying cost of producing and distributing more like literature, such acceptance of contributions is wholly and purely *collateral, incidental,* secondary.

The undisputed evidence shows that no profit or personal gain results, and much literature is given away free by the distributors on condition that recipients read and study same.

Neither respondent nor the courts can say that this is not a proper *way* to worship Almighty God. Jehovah God alone judges His servants, as it is written:

"Who art thou that judgest another man's servant?

to his own master he standeth or falleth. Yea, he shall be holden up: for God is able to make him stand."
THE BIBLE, Romans 14:4

Also, Thomas Jefferson, in his preamble to the Virginia Statute for Religious Freedom, correctly recites—

"that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty"

and then declares

"that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order."

The foregoing true rule was quoted with approval in *Reynolds* v. *United States*, 98 U. S. 145, 162.

Also, in *Commonwealth* v. *Lesher*, 17 S. & R. 155, the Chief Justice of the Supreme Court of Pennsylvania said that the right of conscience is—

"A right to worship the Supreme Being according to the dictates of the heart. To adopt any creed or hold any opinion whatever on the subject of religion; *and to do or forbear to do any act* for conscience' sake, the doing or forbearing of which is not prejudicial to the public weal." [Italics added]

As long as the act of worship by an inhabitant of this land—be he a clergyman, or one of these petitioners, or any other person—does not infringe the law of morals or the right of property of others, the judiciary or any administrative agency is precluded from invading the field of opinion and right practice to say that a given activity is not in fact

an act of worship, or "preaching the gōspel".

To "preach" means to proclaim a message.

"Preaching the gospel of the kingdom of God" means proclaiming to others the Scriptural truths of and concerning Jehovah God and His kingdom, The Theocracy, under Christ Jesus.

To be *ordained* thus to minister or serve merely means to be appointed, by the proper authority, to a position or office to perform duties specifically assigned. Jehovah's witnesses being selected by Almighty God, JEHOVAH, it follows that Jehovah is the authority who ordains the servant or minister, as it is written at Isaiah 42:1; Isaiah 43:10-12; Isaiah 61:1-3; John 15:16. Those and other Scriptures clearly state the commission of authority given by Almighty God through His Son Christ Jesus to persons on earth who are servants, or ministers, of Jehovah.

Since Jehovah's witnesses operate in a legal and orderly way through their corporate representative the Watchtower Society, they also possess an earthly ordination.

The court below wrongly justified respondent's invasion of petitioners' right, by holding that "a preacher" must pay a license tax when he elects to preach by disseminating printed information on the streets and simultaneously receives money contributions to carry forward such work.

Respondent's argument, in effect, interprets *privately* (i.e., for respondent's *purpose* rather than for the purpose of the Teacher, Christ Jesus) the language of the Lord Jesus—Render to Caesar things that are his, and to God things which are His' (Matthew 22:21)—to mean that a minister under contract with *the Creator* can be required to violate that contract and his conscience by conforming to the will of *a creature* (i. e., the State) through asking for and obtaining a license before performing acts which *the Creator* in His written Word commands His ministers to do. Because this direct burden violates God's law it cannot be properly deemed one of the demands of "Caesar" to be

complied with. *Private* misinterpretation of the Scriptures is 'wresting the Word of God' (2 Peter 3:16); for "no prophecy of the scripture is of any private interpretation". —2 Peter 1:20.

By recording the course of action of His faithful ministers (Hebrews, chapter 11, and other Scriptures), Almighty God has made manifest His interpretation, i. e., the true construction of the Master's words (Matthew 22:21) concerning the obligation of all persons of good-will toward Almighty God with respect to conflicting illegal and wrongful demands of "Caesar". The rule followed by every sincere servant of Jehovah and of Christ Jesus is that such servant willingly and joyfully conducts himself in an upright manner, obeying every law of the land which is not in conflict with JEHOVAH'S law, which is supreme, eternal. This position is exactly like that approved by Blackstone and Cooley. See Blackstone *Commentaries* (Chase, 3d ed.), pages 5-7; Cooley, *Constitutional Limitations*, 8th ed., page 968. As to human demands that conflict with the Creator's perfect commandments to His ministers, the God-given rule is that announced by Jesus Christ's apostle Peter: "We ought to obey God rather than men." "Whether it be right in the sight of God to hearken unto you more than unto God, judge ye." —Acts 5:29; Acts 4:19.

Requiring any minister of Almighty God to pay a tax before he preaches by disseminating God's message in printed form (and simultaneously receives money contributions to aid such work) conflicts directly with the law of Almighty God, as well as with the Federal Constitution, because it is a *direct burden*.

A minister of the gospel cannot be licensed to *perform acts* of worship of Almighty God. Furthermore, the ordinance does not mention or contemplate ministers.

The constitutional *right* to serve Almighty God cannot be taxed or licensed. Under existing *American* law, serving God the Creator in conformity with His written commands

is not a "privilege" merely, but a *right*.

As construed, the ordinance licenses *acts* of worship; that is to say, preaching the gospel in obedience to God-given command by distributing literature explaining the Bible. To suffer or permit such taxing or licensing is to authorize and encourage an unlawful joinder of "state and church".

The public street is the natural and proper place to preach the gospel *in the manner* done by Jehovah's witnesses. Here, even more particularly, petitioners' *way* of worship by preaching the gospel *from house to house* is equally proper. *Schneider* v. *State*, 308 U. S. 147.

The ordinance is not *regulatory* in nature. A licensee having paid the specified fee and so obtained a license would then be free to "peddle" in Fort Smith at any time, in any place, and in any manner, wholly unrestricted by any provision in the ordinance. Manifestly, the power to license conferred thereby is the 'power to destroy'. The licensing authority is arbitrarily and wrongfully vested with the "right" and "duty" to both *let* and *prohibit*.

Wholly *incidental* to petitioners' main activity of preaching the gospel is their taking of money contributions. Their activity is not *aimed* or designed to accumulate pecuniary gain. There are no exceptions shown to exist warranting interference, rightly, with petitioners' *acts* of worship by application of the ordinance.

The law of Almighty God is supreme, and when a law of the state requires His minister or ambassador to secure a license as a condition precedent to the doing of what Jehovah commands him to do, the minister must obey God and refuse to apply for a license. Should he compromise and secure a license he must suffer everlasting destruction at the hand of Almighty God.

In such a conflicting situation the Constitution requires that ordinances of man (when applied to restrict or prohibit harmless and beneficial *acts*) yield to conscience of the in-

dividual molded by Jehovah God and His perfect law.

Admittedly, no clergyman who represents any of the respective religious organizations that function constantly within Fort Smith has ever been required to comply with the ordinance. When such clergyman, in pursuit of his ecclesiastical profession, receives money from parishioners upon whom he calls at their homes to supply to them prayer books, candles, or other religious paraphernalia commonly and regularly so provided by clergymen he thereby does not qualify as a peddler, subject to being licensed under this ordinance.

Freedom of conscience and of worship are not limited to right of establishment, maintenance and use of an edifice in which to sermonize or from the pulpit of which to harangue the people with vain babblings of politics, society or science falsely so called. That constitutional liberty includes the right of every inhabitant of this land to teach and practice Bible truths by following in the footsteps of Jesus Christ. From *Watson* v. *Jones*, 80 U. S. 679, 728, we quote:

> "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."

The literature in question relates exclusively to Biblical matters, it explains God-given prophecies recorded centuries ago in Holy Writ and which are now being fulfilled. It shows how, according to the Bible, the time is near at hand when JEHOVAH, the Almighty God, will completely destroy His chief enemy, Satan, and also Satan's entire organization invisible and visible consisting of commercial, political and ecclesiastical elements, in the "battle of that

great day of God Almighty" at Armageddon (Revelation 16: 13-16); which destructive *act of God* shall be immediately followed by continuing growth and irresistible expansion of His Theocratic Government which alone shall prevail eternally in all the earth, to bring peace, joy, prosperity, happiness and endless life to all survivors of that most terrible battle of all time, and eventually also to many who have died in centuries past and who shall by the power of Almighty God be raised from the dead to live upon earth in obedience to His Government under Christ Jesus.

No part of the content of such literature advocates overthrow of government by force or violence or by unlawful means, nor does it in any way interfere with the governments of various nations of earth, in regard to every one of which governments Jehovah's witnesses are strictly neutral.

Thus it can be readily seen that the literature does not relate to any commercial or selfish subject matter. See R. 15-24, 26, 27.

The activity of Jehovah's witnesses in demonstrating this literature in the manner that they do is not a competition with any business of the city's local merchants, whom the ordinance is obviously designed to protect.

It is the misconstruction and misapplication of the ordinance which makes it unconstitutional. The undisputed evidence shows that press activity and acts of worship have been encroached upon unlawfully and that petitioners' have been thereby deprived of their liberty constitutionally secured against State invasion. See

Yick Wo v. Hopkins,
118 U. S. 356, 372
Oney v. City of Oklahoma City,
120 F. 2d 861
Dahnke-Walker Milling Co. v. Bondurant,
257 U. S. 282
Poindexter v. Grunhow,
114 U. S. 270

St. Louis I. M. & S. Ry. Co. v. Wynne,
224 U. S. 354

Kansas City Sou. Ry. Co. v. Anderson,
233 U. S. 325

Whitney v. California,
274 U. S. 357

Concordia Fire Ins. Co. v. Illinois,
292 U. S. 535, 545

See, also, *Hague* v. *C. I. O.*, 101 F. 2d 774, 786; *People ex rel. Doyle* v. *Atwell*, 232 N. Y. 96; 25 A. L. R. 107; 133 N. E. 364.

This type of ordinance has been repeatedly held not to apply to the activity of Jehovah's witnesses because they are ordained ministers of Almighty God, preaching the gospel of His Kingdom. Their taking of money contributions is *incidental* to their main activity and therefore does not constitute peddling of merchandise. Obviously and undeniably, *their* use of the printing press as an adjunct by means of which the gospel message is made suitably and conveniently available to persons willing to receive the same when distributed in printed form renders such manner of *preaching* none the less an activity entirely *outside* of the "other personal activities" rightly placed within taxing or regulatory field covered by ordinary peddlers' and hawkers' ordinances designed exclusively to govern commercial transactions. See

Schneider v. State [New Jersey],
308 U. S. 147
Thomas v. City of Atlanta [Ga.],
1 S. E. 2d 598
Semansky v. Stark,
199 So. 129; 196 La. 307
Cincinnati v. Mosier,
22 N. E. 2d 418

State [South Carolina] v. Meredith,
15 S. E. 2d 678
Donley v. City of Colorado Springs,
40 F. Supp. 15
Commonwealth v. Reid et ux.,
20 A. 2d 841
Tucker v. Randall,
15 A. 2d 324; 18 N. J. Misc. 675

Streets are natural and proper places for gift distribution or *sale* of literature. In Holy Writ servants of Almighty God are counseled to disseminate right information in such proper places. (See Proverbs 1:20, 21; Luke 13:26; 10:10; 11; 7:11-16.) Restrictions or ordinances such as this Fort Smith ordinance, properly applicable to hawkers and peddlers of ordinary articles of merchandise, are neither appropriate nor available either to prohibit or to regulate *sale* or gift distribution of literature on the streets or from house to house. See

Hannan v. City of Haverhill [Mass.],
120 F. 2d 87
Schneider v. State,
supra
Cantwell v. Connecticut,
310 U. S. 296

"As said in *Lovell* v. *City of Griffin*, supra [303 U. S. 444], *pamphlets* have proved most effective instruments in the dissemination of opinion. And perhaps *the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people*. . . . To require a censorship *through license* which makes impossible the free and unhampered distribution [by gift OR SALE] of pamphlets strikes at the very heart of the constitutional guarantees." (Italics added) *Schneider* v. *State*, supra; see, also, *Lovell* v. *City of Griffin*, supra.

The Fort Smith ordinance is used here to encumber "the press" and practically deny distribution. The burden of its provisions falls upon the distributor. It is manifest that the ordinance is *not* regulatory, because one securing a license is then at liberty to go anywhere within the city that he pleases, at any time, and *sell* or give away literature in any manner and without limitation.

A case directly in point is *Vermont* v. *Greaves*, supra, decided Nov. 5, 1941. There the Supreme Court of Vermont said:

> "... respondent, Elva Greaves, is charged with a violation of section 22 of chapter 21 of the Rutland City ordinances as amended. Briefly stated, the offense alleged is that on, to wit, the 19th day of April, 1941, at the City of Rutland, the respondent did 'carry on the business of "peddler" by selling pamphlets for money without obtaining a license from said City of Rutland so to do, ...' Trial was by jury in the Rutland Municipal Court, a verdict of guilty returned, judgment entered thereon and the case is here upon exceptions by the respondent.
>
> "The parts of the ordinance in question which are here material are as follows: 'No person shall carry on the business of ... peddler ... within the city, ... without first obtaining a license therefor as provided in this chapter, ...'
>
> "... respondent's motion for a directed verdict was upon the grounds that she was not a peddler but did disseminate teachings of the Bible by distributing books, booklets, pamphlets and magazines for which she received money contributions; that the undisputed evidence shows that she is not guilty and also upon the grounds that the ordinance in question as applied to her is contrary to the provisions of both the Federal and State Constitutions in that she has thereby been deprived of her rights as to freedom of speech, freedom

of press and freedom of right to worship Almighty God. . . .

"The respondent is an ordained minister of a . . . class . . . designated as 'Jehovah's witnesses'. As such she believes that she is commanded by the Almighty to spread the Gospel as she and other members of this organization believe it to be and that it is her duty to do so. She did this by publicly taking positions on the sidewalks and streets in the City of Rutland, equipped with a magazine bag and several magazines known as the 'Watchtower' and 'Consolation'. As people passed she would call out some statement referring to religion and if any person gave attention and wished a magazine she sold it to him for five cents which was no more than enough to cover the cost of publishing same. She sold several of these in this manner on the day mentioned in the complaint. The object of this distribution of magazines was to place in the hands of the people in general true Biblical teachings as she understands them and believes them to be and not for the purpose of any financial gain or material personal benefit whatsoever. She had no license from the City of Rutland to carry on therein the business of peddler.

"Section 24 of this ordinance provides that the fee for a peddler's license shall be from $10. to $200., depending upon the manner of travel of the applicant and the capacity of the vehicle used to transport the goods he desires to sell.

"There is no claim that the printed matter in the magazines in question was obscene or otherwise objectionable. . . .

"Whether the license fee with which we are concerned is considered as a license fee or a license tax, its effect upon circulation of these magazines is the same in either case. In considering the constitutional question here this ordinance must be tested by its

operation and effect rather than by its form. Near v. State of Minnesota, 283 U. S. 697, 708; Henderson v. Mayor, 92 U. S. 259, 268. Therefore what is stated by the United States Supreme Court in the case of Grosjean v. American Press Company, 297 U. S. 233, . . . has great weight in determining the question in the case at bar. . . .

"Freedom of the press secured to the people of the United States by the First and Fourteenth Amendments to the Constitution applies not only to printed matter circulated without charge to the recipients but it also *applies when a charge is made for it.* Grosjean v. American Press Co., supra; Lovell v. City of Griffin, supra.

"It is true as the State contends that within limits permitted by law a municipality may enact regulations in the interest of public safety, health, welfare or convenience. Therefore, we now come to the question as to whether this ordinance as applied to the facts in this case is a valid regulation.

"In every case this power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the freedom protected by the United States Constitution. Cantwell v. State of Connecticut, 310 U. S. 296; Schneider v. State (Town of Irvington, N. J.), 308 U. S. 147.

"As applied to the facts in this case this ordinance *makes no provision regulating the manner of carrying on the business of peddlers* within Rutland City. The respondent having paid $10 and so *obtained a license would then have been free to peddle* these magazines in the City of Rutland at any time, in any place, and in any manner, wholly unrestricted by any provision in the ordinance. In short, her freedom to peddle these magazines there would be as complete as though the ordinance did not exist. To enforce the terms of

this ordinance under the circumstances of this case would be to *compel the respondent to pay* a fee of $10 in order *that she might avail herself of a privilege secured to her* by the United States Constitution. Also that this requirement of the ordinance, if enforced here, would operate as a *restraint upon the circulation* of the magazine in question is too plain to need further discussion. Grosjean v. American Press Co., supra. It follows that as applied to the facts here this ordinance *cannot be justified as a valid regulation.* Grosjean v. American Press Co., supra; Cantwell v. Connecticut, supra; Lovell v. City of Griffin, supra.

"The only question presented here and therefore the only one considered is the application of this ordinance to the facts in this case. The fact that when so applied the ordinance is unconstitutional does not determine that it would be invalid for that reason when applied to other and different facts. Whitney v. People of the State of California, 274 U. S. 357, 378; Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 289.

"We hold that this ordinance as applied to the respondent under the circumstances shown by the evidence in this case is unconstitutional because when so applied *it abridges rights of the respondent* as to freedom of the press secured to her by the First and Fourteenth Amendments to the United States Constitution.

"Judgment reversed and the respondent is discharged." [Italics added]

"Freedom of press" is not confined to distribution of literature free of charge. The constitutional safeguard extends likewise to protect those who *sell* literature, and most certainly includes the right to receive money contributions (tendered by or invited to be given by willing ones receiving literature at the same time) *incidental* to the main activity of preaching the gospel.

Hannan v. City of Haverhill,
supra

On March 17, 1942, the Illinois Supreme Court, in *City of Blue Island* v. *Kozul* (one of Jehovah's witnesses), declared unconstitutional an ordinance very similar, if not identical, to the ordinance involved in the case at bar. That Illinois case is unreported at time of this writing and is quoted from at length for the convenience of this Court. Chief Justice Murphy, speaking for the court, said:

"The parts of the ordinance material to the questions here involved are as follows: 'Section 1. Definition of Peddler—Peddlers required to be Licensed. That every person, firm or corporation who shall sell or offer for sale, barter or exchange at retail any goods, wares or merchandise of any kind whatsoever, by traveling from place to place in, along and upon any of the streets of the city of Blue Island . . . whether to regular customers or not, shall be deemed a peddler and shall before engaging in said business, obtain a license as a peddler as hereinafter provided.' . . .

"The magazines sold by the defendant would come within the term 'goods, wares and merchandise' used in the ordinance. *Village of South Holland* v. *Stein*, 373 Ill. 472. . . .

"Recent pronouncements of the Supreme Court of the United States make it obvious that the ordinance here in question, as applied to the sale and distribution of the magazines and leaflets by the defendant is unconstitutional and a violation of the right of freedom of speech and of the press. *Lovell* v. *City of Griffin, supra; Schneider* v. *Town of Irvington, supra; Grosjean* v. *American Press Co., supra; Cantwell* v. *Con-*

necticut 310 U. S. 296, 84 L. ed. 1213; *Hague* v. *C. I. O.*, 307 U. S. 496, 83 L. ed. 1423. . . .

"The ordinance of the city of Blue Island, as applied to the defendant, can not be sustained as a revenue measure. The United States Supreme Court in *Grosjean* v. *American Press Co., supra*, reviews the history of the long struggle which took place in England between the government and the proponents of a free press. The methods anciently used to control the press were censorship, license and taxation. It is obvious that through license and taxation, as well as by censorship, freedom of speech and of the press can be effectively curtailed and even denied. . . . The framers of the first amendment to the United States Constitution were familiar with the long struggle of the press in England to be rid of the license taxes and the stamp taxes imposed by the government to curtail and limit the freedom of the press, and the first amendment prohibits any form of restraint on the publication or circulation of printed matter.

" . . . Liberty of circulating is as essential as to the freedom of the press as liberty of publishing. Without circulation the publication would be of little value. (*Ex parte Jackson*, 96 U. S. 727, 24 L. ed. 877.) The license tax in the *Grosjean case* was held invalid because of its direct tendency to restrict circulation.

" . . . The right to freely print and circulate applies not only to printed matter circulated without charge to the recipients, but it also applies when a charge is made for it. (*Grosjean* v. *American Press Co., supra; Lovell* v. *City of Griffin, supra.*) . . .

"The city contends that in some of the cases cited the ordinance provided for censorship through licenses or permit and gave the certifying officer the power to reject or deny the application at his discretion on consideration of the moral character of the applicant or the nature of his project, whereas, the ordinance of the city of

Blue Island did not provide for censorship but gave the applicant a right to a license on payment of the required fee. It can, however, make no difference whether the ordinance provides for censorship through licenses and permit or whether the ordinance merely provides a license fee or license tax on the privilege of publishing and circulating printed matter. In either event the effect is that there is an abridgement of the freedom of the press.

"The publishers and distributors of newspapers, magazines, pamphlets, circulars, books or other printed matter are not immune from the ordinary forms of taxation for the support of the government, but they can not be compelled to purchase, through a license fee or a license tax, the privilege freely granted by the constitution. . . .

"The ordinance is not regulatory. As applied to the facts in this case, the ordinance makes no provision regulating the manner of carrying on the business of peddlers in the city of Blue Island. The defendant's right to a license on the payment of the required fee or tax was absolute. If the defendant paid the $25 for a year, or $4 for a day and so obtained the license she would then have been free to peddle the magazines in the city of Blue Island during the paid license period at any time, in any place and in any manner, wholly unrestricted by any provision in the ordinance. Her freedom to peddle the magazines would then be as complete as though the ordinance did not exist. The ordinance is purely a fee or tax measure, and under the circumstances in this case its effect is to compel the defendant to pay a fee or tax of $25 per year or $4 per day to exercise a privilege freely guaranteed to her by the constitution of the United States as well as by the constitution of this State. That this ordinance as applied to the facts in this case would operate as a restraint upon the circulation of the magazines in ques-

tion is self-evident. If the defendant should be unable to pay the required fee or tax, circulation and distribution on the streets of Blue Island was prohibited and denied. *Grosjean* v. *American Press Co., supra.* . . . "

In *Commonwealth* [Borough of Clearfield, Pa.] v. *Reid et ux.*, supra, involving an ordinance very similar to that of Fort Smith, President Judge Keller of Pennsylvania Superior Court said:

> "The historical reference to 'pamphlets' in that [Lovell v. City of Griffin, supra] opinion and in other opinions of that Court (Schneider v. State (Town of Irvington), supra, p. 164; Thornhill v. Alabama, 310 U. S. 88, 97; Grosjean v. American Press Co., 297 U. S. 233, 245-250, etc.) is *not limited to 'pamphlets' which are distributed without cost.* Every student of history knows that the 'pamphlets' referred to by Chief Justice Hughes in his opinion, and by Mr. Justice Sutherland in the Grosjean case, were not for the most part circulated gratis, but were distributed to subscribers or *sold.*" [Italics added]

See, also, *The Encyclopædia Britannica,* Vol. 20, Pamphlets, pp. 659-660.

"The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation *comprehends every sort of publication which affords a vehicle of information and opinion.*" (Italics added) *Lovell* v. *City of Griffin,* supra.

It is of vital importance to protect the essential liberty of freedom of the press and freedom to worship Almighty God, from every sort of infringement. See, also,

State [Fla.] ex rel. Wilson v. Russell,
1 So. 2d 569, *particularly* opinion of
Chapman, J., specially concurring
State [Fla.] ex rel. Hough v. Woodruff,
2 So. 2d 577

Petitioners' freedom to worship Almighty God has likewise been abridged and denied by respondent. *Cantwell* v. *Connecticut*, supra.

Other cases involving Jehovah's witnesses and in which application of ordinances similar to the Fort Smith ordinance has been held unconstitutional are:

Commonwealth [City of Coatesville, Pa.] v. Schuman [Schieman] (January 29, 1937), *very specially noteworthy*,
189 A. 503; 125 Pa. Superior Ct. 62
Kennedy v. City of Moscow [Idaho],
39 F. Supp. 26
Donley v. City of Colorado Springs,
supra
Zimmermann v. Village of London [Ohio],
38 F. Supp. 582
South Holland (Village of) v. Stein,
26 N. E. 2d 868; 373 Ill. 472
Ex parte Walrod
120 P. 2d 783
Ex parte Winnett et al.
121 P. 2d 312
Borchert et al v. City of Ranger (Tex.) et al.
42 F. Supp. 577

Here, too, the burden is imposed upon the "distribution" or "circulation" end of publication which, under the constitutional protection, is intended to be left unhampered and unrestrained by all forms of license and permit laws. Under the Fort Smith ordinance, every newsboy or other per-

son distributing any pamphlet, book or periodical is required to pay the license fee.

The license fee imposed is *not for the purpose of regulating* and paying necessary expense incidental to use of the streets, as was the *parade* license fee in *Cox* v. *New Hampshire*, 312 U. S. 569. There the fee collected was used in providing policing of *parades*. Here, however, no such aim or purpose exists. Here, ostensibly, the object appears to be *revenue raising*, but, really, the aim, purpose and *effect* or result is destruction of distribution or circulation, because the burden of tax is placed on the distributor.

Suppose a citizen interested in good government found that administration of officials in Fort Smith were corrupt and incompetent, and he desired to print a pamphlet making known such fact for the purpose of effecting a change of administration. If he prepared such a pamphlet and distributed it, either *gratis* or for a small charge, he would be required to get a license, and on failure to do so could be prosecuted and convicted.

Let us say that Nazis, Fascists and Japs were moving in secret to invade the borders of Arkansas, and some good citizen learning this fact printed millions of pamphlets or leaflets for distribution throughout Arkansas. In Fort Smith, under this ordinance, both he and every loyal citizen aiding him to distribute such printed matter could be convicted for their failure to pay the tax and secure a license. A modern-day Tom Paine or John Milton could not safely function with his pamphlets in Fort Smith.

The tax here in question directly encumbers and smothers distribution and circulation of literature; and if held to be valid, it could be used to destroy circulation. This is plain enough when we consider that if it were increased to a high degree, as it could be (*Magnano Co.* v. *Hamilton*, 292 U. S. 40, 45, and cases cited), it well might result in completely suppressing both distribution and even publishing to point of destruction.

As our further argument we here adopt in its entirety the opinion of Mr. Justice Sutherland in *Grosjean* v. *American Press Co.*, 297 U. S. 233, 244-251, and also the statement appearing in *Near* v. *Minnesota*, 283 U. S. 697, 707-716 et seq.

The ordinance is clearly *not regulatory*. The license tax provided for is not a general taxing law for support of government as contemplated by this Court. The ordinance throws the burden upon the pamphleteer or other distributor of limited means and thus stops circulation. A thousand distributors would be required to pay a huge sum to function under the ordinance. Under the same ordinance the one printer for the thousand distributors would be required to pay nothing. The unreasonableness of the ordinance license tax is manifest.

Therefore the argument and contention on the part of respondent that petitioners' main activity is peddling for profit is without support in law or fact and should be rejected.

This Court can take judicial notice of the clearly reasoned opinion of a humble city magistrate of this nation's largest and *greatest* municipality, involving an identical ordinance. Very early New York City's Magistrate Morris Rothenberg discerned and applied the American principles so ably set forth by Chief Justice Hughes in *Lovell* v. *Griffin*, 303 U. S. 444. In *People* v. *Max Banks* (July 20, 1938), 6 N. Y. S. 2d 41, Judge Rothenberg said:

> "I hold it to be an infringement of the First and Fourteenth Amendments to the Constitution of the United States guaranteeing liberty of the press to require the payment of a license fee for the privilege of *selling a pamphlet on the public streets* and to impose a penalty of fine and imprisonment for violation of the section mentioned.
>
> "In applying the principle laid down in the Gros-

jean case to the facts in the Lovell case the Chief Justice said:

> 'The ordinance cannot be saved because it relates to distribution and not to publication. "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." . . . The license tax in *Grosjean* v. *American Press Company*, supra, was held invalid because of its direct tendency to restrict circulation.'

"Following this reasoning it is clear that the imposition of a license fee or tax as a prerequisite to the *sale of pamphlets on the streets* has a direct tendency to restrict circulation, notwithstanding the fact that Article 6 of the Administrative Code [City of New York] permits free distribution of literature *on the public streets without restriction*. Free circulation depends as much and conceivably more upon the sale than upon free distribution, considering the cost involved in the free distribution of literature. Adequate circulation may only be rendered possible through *sale* defraying the cost of production. How effectively a license fee or tax may act as a curtailment upon *sale* and consequently upon circulation the Supreme Court in the Grosjean case said 'becomes plain when we consider that if the tax were increased to a high degree, as it could be, if valid . . . it well might result in *destroying circulation*'." [Italics added]

In *People* v. *Finkelstein*, 2 N. Y. S. 2d 941, also it was held that license tax ordinances of the City of New York very like the questioned license ordinance were unconstitutional as construed and applied to street distribution of literature.

Can Invasion of the Right Be Justified?

The remaining question is whether or not such invasion is justified under the exceptions allowed by the Court in *Watson* v. *Jones,* 80 U. S. 679, 728. No such exceptions appear in this record. Therefore the State Supreme Court had no authority to invade petitioners' rights by applying this ordinance.

Respondent, the trial court and the Arkansas Supreme Court wrongly contend that petitioners were engaged in a *commercial* activity. Not only is there no evidence to support such contention, but it is in total disregard of existing evidence that petitioners were preaching the gospel, and "did not *sell*" (R. 15-24, 26, 27), i.e., did not act for a *commercial* objective, did not aim to acquire pecuniary gain for themselves as in conducting a trade or business enterprise.

Wholly *incidental* to petitioners' main activity of preaching the gospel is the taking of money contributions. Other courts have specifically found that the taking of money contributions is entirely *incidental,* collateral, to the main purpose of preaching the gospel of God's kingdom, THE THEOCRACY. See

Donley v. City of Colorado Springs
40 F. Supp. 15
Zimmermann et al. v. Village of London (Ohio)
38 F. Supp. 582
State [S. Car.] v. Meredith
15 S. E. 2d 678
Cantwell v. Connecticut
310 U. S. 296
Semansky v. Stark
199 So. 129
Thomas v. Atlanta
1 S. E. 2d 598
Cincinnati v. Mosier
22 N. E. 2d 418

In each of the cases just cited the activity involved was that of Jehovah's witnesses.

Cases relied on by respondent in justifying the decision below involved general taxes and licenses affecting the gross proceeds of newspaper business, which tax and licensing provisions were not directed at, or a direct burden on, distribution of literature, or calculated on the basis of circulation; but which were entirely incidental and collateral thereto.

Here the license tax throws the burden on the distributor and is a direct encumbrance upon circulation.

The case of *Cook* v. *City of Harrison*, 21 S. W. 2d 967, 180 Ark. 546, is unsound and contrary to the great weight of authority, and is based upon a false premise. Furthermore, that case is, as it were, relegated to days of the horse and buggy antedating World War I. That opinion was delivered many years before the decisions in *Grosjean* v. *American Press Co.*, supra, *Lovell* v. *Griffin*, supra, *Schneider* v. *State*, supra, and *Cantwell* v. *Connecticut*, supra, which probably accounts for the error of the Arkansas Supreme Court.

In view of the broad, liberal, constitutional view taken by this Court, that *Cook* v. *Harrison* opinion and decision must be now held unsound, void.

In this connection we call attention to the fact that no appeal or petition for certiorari was presented to this Court in that *Cook* v. *Harrison* case. Therefore this Court did not pass on that case.

The license tax here cannot be distinguished from the type of law requiring a permit from a police chief or other authorized official in whom is vested discretion to grant or refuse the permit. This character of law is admittedly un-

constitutional. See *Lovell* v. *Griffin*, 303 U. S. 444, and *Schneider* v. *State*, 308 U. S. 147. The same prohibitive result or evil can be and is reached under the license tax law here through increasing the license fee so as to make it impossible for all, except the ultrarich, to exercise constitutional rights guaranteed to everyone. Thus the right of liberty and freedom secured to all by the Constitution would become the prerogative of the wealthy.

Indeed, one might be too poor to pay even the smallest possible license fee that may be fixed, and thus, by reason of his poverty, be refused the rights guaranteed him under the Constitution. The exercise of rights so vital to the maintenance of democratic principles is not and cannot be made dependent upon one's ability to raise sufficient funds wherewith to pay a license-tax fee as a condition precedent to the exercise thereof. To thus hold might and would deprive large segments of the population of the guarantee of their freedom. The results would be a substantial dissolution of the rights of the people and a serious impairment of equality of the inhabitants of this land, and would make indigence a basis for restricting freedom of civil rights.

The ordinance questioned here permits the people, in the exercise of their constitutional rights, to be divided into two classes: one class with worldly riches free to exercise the right of freedom of press and worship according to the dictates of conscience, and another class that is poverty-stricken to the point of being unable to purchase the required license to exercise their vital rights. Thus the ordinance is at war with the Constitution and is a short-sighted blow at the security of the people's liberties.

Laws which make unlawful the bringing of indigents into a state are unconstitutional and void. See *Edwards* v. *California*, 314 U. S. 160, 182-186; 62 S. Ct. 164, 166-170. The principle announced in that case makes such, by analogy, authority for petitioners here.

Like "Free Commerce"

The license tax here applied to the exercise of an admitted constitutional right can be likened to the various kinds of taxes that have been knocked down as being unconstitutional burdens upon interstate commerce.

Petitioners do not and can not rely upon the interstate commerce clause itself. However, by analogy, petitioners' exercise of the rights of "free press" and "worship" is entitled to *equal protection* against any direct tax burden, even as the right of "free commerce between the states".

The courts have held to be bad taxes and license fees constituting a direct burden against interstate commerce. Such cases, by analogy, show that a similar tax, which directly burdens the exercise of freedom of press and worship, is likewise bad.

This Court has declared often that license-tax laws and peddlers' license ordinances similar to the one here involved are unconstitutional when construed and applied to cover peddlers or agents selling from house to house or on the streets merchandise shipped from another state. See *Sabine Robbins* v. *Shelby County Taxing Dist.*, 120 U. S. 489, 494-496; *Caldwell et al.* v. *North Carolina*, 187 U. S. 622, 624-632; *Rearick* v. *Pennsylvania*, 203 U. S. 507, 510-513; *Dozier* v. *Alabama*, 218 U. S. 124, 126-128, and *Real Silk Hosiery Mills* v. *City of Portland et al.*, 268 U. S. 325, 335-336.

In these trying hours this Court will be equally as hasty and astute to protect the rights under the "Bill of Rights" and the Fourteenth Amendment to the Constitution as it is in sustaining the commerce clause, especially when human rights are threatened, as here, with destruction by the direct burdening of circulation and distribution, the very life of "free press".

Respondents say that because the state courts have passed on the validity of this and similar ordinances that this court and other federal courts do not have the right to

reach a contrary conclusion or enjoin the enforcement. We call attention to the fact that the New Jersey Supreme Court had passed on and approved the validity of the ordinance involved in the *Hague* case before the injunction suit was brought. This was a basis for an injunction rather than ground for denial. Such a holding constitutes a denial of constitutionally secured "civil rights". (See statement in footnote 23 of the opinion of Mr. Justice Roberts in the *Hague* case.) The courts of the States are not the sole custodians of the Constitution; and when any state court misconstrues the United States Constitution such court's holding is not binding upon any federal court called upon to "redress" the deprivation of civil rights by state courts.

It is a fundamental rule that the question of construction of a statute or ordinance and definition of its terms is for the State courts to determine and when they have construed the enactment such construction is binding upon the federal court. This rule is well settled and does not require citation of authority.

But *where a federal question is involved* the federal courts are not bound by the construction given the statute or ordinance by a state court.

Here a federal question is involved. This federal court cannot be forced to follow the arbitrary ruling of any state court that 'there is no federal question'.

The fact that there is a federal question causes the exception to the above rule. This Court must now determine whether the ordinance is unconstitutional and contrary to the Fourteenth Amendment as construed and applied by respondent.

In proof that the foregoing paragraph correctly states the rule, see *Scott* v. *McNeal*, 154 U. S. 34; *New Jersey* v. *Anderson*, 203 U. S. 483; and *Lindsey* v. *Washington*, 301 U. S. 397.

It has been clearly stated and held by this Court that it is not concerned with characterization or construction of

state legislation by the state court, nor even with the question whether it has in terms been construed, but solely with the effect and operation of the law as put in force by the state in light of the Federal Constitution.

Corn Prod. Ref'g Co. v. Eddy,
249 U. S. 427
St. L. & S. W. Ry. Co. v. Arkansas,
235 U. S. 350
K. City & Ft. Smith Ry. Co. v. Botkin,
240 U. S. 227, 231
Mountain Timber Co. v. Washington,
243 U. S. 219, 237

The ordinance is also void because it vests arbitrary and discriminatory power in the licensing authority of the City of Fort Smith. *Yick Wo* v. *Hopkins*, 118 U. S. 356, 372.

In today's perilous hours men's hearts are failing them for fear of what they see coming upon the human family. This great *fear* has driven rulers and judges of every land into desperation and perplexity, resulting in a breaking down of justice and morality. Notwithstanding the turbulence and the unparalleled strains and stresses of these momentous hours,

> "a court in the discharge of duty under our system is required to be oblivious to public clamor, partisan demands, notoriety, or personal popularity and to interpret the law fearlessly and impartially so as to promote justice, inspire confidence and serve the public welfare. . . . The perpetuity of democracies has as a foundation an informed, educated and intelligent citizenry. An unsubsidized press is essential to and a potent factor in instructive information and education of the people of a democracy, and a well informed people will perpetuate our constitutional liberties." (Chapman, J., concurring specially, in *State* [Fla.] *ex rel.*

Wilson et al. v. *Russell* [April 8, 1941], 1 So. 2d 569.)

See, also, "Freedom of the Press" (C. A. Peairs, Jr.), 28 Ky. Law Journal (May 1940) 369-410, an arresting review of the vital questions, concluding:

> "[pp. 409-410] . . . With the exception of a few noble liberals, who believe that 'liberty of the press means liberty for those with whom we disagree' [FOOTNOTE 126: "Felix Frankfurter, 37 Har. L. Rev. 1029, following the Holmes approach."], the sides taken in questions of this sort depend on whose ox is being gored. . . . The First Amendment, and allied provisions, may be mere nebulae in times of comparative natural harmony, but when the mind of a nation becomes aroused against a small minority, they do their greatest work."

During these hectic days a gigantic wave of prosecutions and persecutions against Jehovah's witnesses has swept over this "land of the free and home of the brave". Why? Sophistry and fine reasoning, without sound foundation, have subtly drawn some of the lower courts into the erroneous, un-American position of approving judgments of conviction denying liberty of conscience, of thought, of speech and of press, under the pretext or motive of 'safeguarding national defense interests'. Blind to the ultimate result of such shortsighted and hasty conclusions, such zealous but panicky members of the judiciary have unwittingly dragged segments, at least, of this nation closer to the brink of totalitarian rule.

The only factor which distinguishes this country as a republic with a democratic form of government, and therefore the only thing worthy of preservation from totalitarian aggression, is that American heritage epitomized as the "Bill of Rights". Once the freedom anchored and secured thereby is gone, the reason is lost for fighting Nazism and allied totalitarian tyranny.

In this hour of emergency even more than in times of

peace there rests upon this nation's courts and jurists—from the lowly magistrate to the Chief Justice—a *higher* duty to scrutinize, to weigh, to appraise the 'substantiality of reasons adroitly advanced in support of *regulation* of free enjoyment of fundamental personal rights', so as to guard against any and all encroachments. Why? The danger of loss, total and permanent loss, in such times as these is intensified a hundredfold.

Here, then, let deepest consideration be given to the *effect* of the challenged ordinance rather than merely to the cold black and white text of its provisions.

Before exercising its regal and judicial power, let this tribunal, this country's last bulwark of liberty, consider a profound expression made in another trying hour, in *Ex parte Milligan,* 4 Wall. 2, 120 (1866); and also the later dissenting words of Mr. Justice Sutherland:

> "Do the people of this land—in the providence of God, favored, as they sometimes boast, above all others in the plenitude of their liberties—desire to preserve those so carefully protected by the First Amendment: liberty of religious worship . . . ? If so, let them withstand all *beginnings* of encroachment. For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."
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> *Associated Press* v. *N. L. R. B.*
> 301 U. S. 103, 141

Conclusion

Among the oldest cases on the precise point now before this Court is the one recorded in the Bible book of Acts of the Apostles, chapter 5, beginning at verse twenty-six. Disciples of Jesus Christ were publicly informing the people, disseminating the truths of the Word of Almighty God in obedience to His command. Religionists were grieved and angered because God's truth was being proclaimed. The clergy and other religionists conspired against the publishers of the truth. Those conspirators instigated the arrest of the disciples, who were haled into the judgment hall. A high Roman court then sitting in Palestine heard that case. After hearing the evidence, one of the members of that court, Gamaliel, a learned counselor, arose and, addressing his fellow members of the court and all present, said:

> "Refrain from these men, and let them alone: for if this counsel or this work be of men, it will come to nought: but if it be of God, ye cannot overthrow it; lest haply ye be found even to fight against God."

This temperate and salubrious principle all right-minded persons always follow.

The Most High God, JEHOVAH, Himself counsels:

'Now therefore be wise, O ye kings: be instructed, ye judges of the earth. Serve JEHOVAH with fear, and rejoice with trembling. Kiss His Son, THE KING Christ Jesus, lest He be angry, and ye perish in the way, for His wrath will soon be kindled. Happy are all they that take refuge in Him.'—Psalm 2:10-12, *American Revised Version.*

This Court should reverse the judgment of the Arkansas Supreme Court and order the petitioners discharged, we confidently submit.

HAYDEN COVINGTON
Attorney for Petitioners